



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

The tenant filed an Application for Dispute Resolution on December 15, 2020 seeking compensation from the landlord. This is related to the landlord's issuance of a Notice to End Tenancy for the landlord's Use of Property (the "Two-Month Notice"). issued on July 27, 2020. Additionally, they applied for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "Act") on April 26, 2021. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

The tenant confirmed they prepared documentary evidence in advance of the hearing and provided these materials to the landlord. The landlord confirmed their receipt of these materials. The landlord confirmed they did not submit evidence in advance of this hearing.

### Preliminary Matter

At the outset of the hearing, the landlord presented that there was a previous dispute resolution process. In that matter, an arbitrator decided in the landlord's favour in January 2021. They presented this to show this is based on the same facts in this hearing. On my review of that prior decision, I find there was an application by the tenant on a separate section under the *Act*. Though based on the same tenancy, I find the arbitrator rationale and the outcome of that hearing has no bearing on the matter herein. I have reviewed the decision only, and did not review evidence or materials submitted by the landlord separate in that matter.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation for the Notice to End Tenancy for the landlord's Use of Property, pursuant to s. 51 of the *Act*?

Is the tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The tenant provided a copy of the tenancy agreement, signed with the landlord on April 15, 2018. At the time of the end of the tenancy, they paid \$1,800 per month. The agreement in the evidence shows the fixed-term tenancy was renewed for the following year from August 1, 2019 through to August 1, 2020. The agreement indicates the tenant must move out of the residential premises.

In the hearing, the tenant provided that they received a call from the landlord in July 2020 saying that tenancy agreement was about to expire, so the landlord asked: "how much would [the tenant] pay for a new contract?". The tenant challenged the landlord on this specific point, stating they would only pay any form of rent increase that was legal at that point in time in 2020. There were other issues involving the tenant subletting the rental unit without the landlord's permission, and some talk of the locks needing changing.

According to the tenant, the landlord responded by saying this arrangement would not work for them, and the tenant later received a message stating "the landlord decided not to keep you as a tenant".

The tenant provided a copy of the Two-Month Notice issued by the landlord on July 27, 2020. This gave the move-out date of October 1, 2020. On page 2, the landlord indicated that the child of the landlord or the landlord's spouse will occupy the unit.

On August 11, 2020 the tenant advised the landlord they would end the tenancy earlier than the date given on the Two-Month Notice. This was for a move-out date on August 31, 2020. The end of tenancy date was September 1, 2020. On that date, the tenant vacated the rental unit.

The tenant presented their submissions to show that the landlord then posted ads for rental of the same unit, with the posting online being updated 2 or 3 times per day. Rent amounts went from \$2,200 to \$1,950 then \$1,850. Finally, the ads online stopped when the landlord entered an agreement with new tenants. The tenant described online pictures for the advertisement showing a different unit painted because the tenant had previously painted the rental unit interior on their own. The tenant stated this all reveals a lack of good faith on the part of the landlord.

The tenant provided copies of online ads showing a posted date of September 6, 2020, September 24, October 22 and October 25. These show the varying rent amounts required as the tenant described in the hearing. The tenant also provided text messages from their own personal contacts to the landlord, asking directly about rental availability, this in response to the online ads. A message from the landlord in response states that the unit is rented out and not available, this by November 13.

The landlord responded to this to say they were willing to renew the agreement after the end of the fixed term in August 2020. When these discussions with the tenant ensued, they were shocked at the tenant's replies to conditions of no subletting. Based on this they became nervous and then decided not to renew the lease. They stated they initially did not have the intention of renting the unit again; however, after two months of using the unit as a workspace, costs began to accumulate, and this meant the "budget was getting tight." New tenants arrived in the unit and there was a new tenancy agreement in place for December 1, 2020.

The landlord explained the online ads by saying current market information was "good information to have". The ads were placed from a research perspective for an idea of current rental rates in the current market. This is where "people are more interested at certain price points, and so [the landlord] can gauge market demands". The landlord stated they undertook this online advertising because the unit at that time was empty.

### Analysis

Under s. 49(5) of the *Act* a landlord may end a tenancy if a purchaser, or a close family member, intends in good faith to occupy the rental unit.

A tenant's compensation in these circumstances is governed by s. 51 which provides:

(2) Subject to subsection (3), the landlord . . . must pay the tenant. . . an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In order to make a finding of fact, and thereby determine an entitlement to compensation, I shall determine whether the landlord a) took steps to accomplish the stated purpose for ending the tenancy; or b) used the unit for family occupancy for at least 6 months' duration. If the steps taken, or family use, are not established in the evidence, I shall then determine whether extenuating circumstances prevented this.

The landlord did not dispute that they posted ads to Craigslist soon after the end of the tenancy. In their submission, this was in order to measure the market for rentals, and this was "good information to have." The landlord also clarified in the hearing that a new tenant was within the unit, with a new tenancy agreement, on December 1, 2020.

I find this is clear evidence that the landlord did not use the unit for their family occupancy as they so indicated on the Two-Month Notice. They did not take steps toward family occupancy within a reasonable period of time. The online ads provided by the tenant show active postings online at the start of September. Despite the tenancy here ending its fixed term, the landlord served a Two-Month Notice for their own family's use, then did not accomplish this. This is a breach of the *Act* governing the reason for the landlord ending the tenancy.

I find as fact that the landlord's focus at the end of the tenancy here was finding future tenants and this was done so in an expedient manner prior to new tenants entering in December. The ads on Craigslist give full effect to their intent to rent; this runs counter to any plan for family occupancy. Therefore, I find this is further evidence there were no significant steps taken toward the stated purpose of the reason for the Two-Month Notice. The landlord provided no evidence to show otherwise.

There was no presentation of extenuating circumstances presented by the landlord in the hearing; therefore, I find there are no such circumstances present.

For these reasons, I find the tenant has presented sufficient evidence to show they are entitled to compensation for a breach of the *Act* by the landlord. I grant the tenant compensation in the amount specified by s. 51(2), the equivalent of twelve times the amount of the monthly rent of \$1,800.

The *Act* s. 72 grants me the authority to order the repayment of a fee for the Application. As the tenant was successful in their claim, I find they are entitled to recover the \$100 filing fee from the landlord.

### Conclusion

Pursuant to s. 51 and s. 72 of the *Act*, I grant the tenant a Monetary Order in the amount of \$21,700.00. The tenant is provided with this Order in the above terms and they must serve it to the landlord as soon as possible. Should the landlord fail to comply with this Order, the tenant may file the Order in the Small Claims Division of the Provincial Court where it may be enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: April 27, 2021

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Residential Tenancy Branch