



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FF

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act (Act). The tenant applied for:

- Compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice); and
- for recovery of the filing fee paid for this application.

The tenant and the landlord's representative (representative) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The representative confirmed that the landlord received the tenant's evidence and further confirmed that the landlord did not provide evidence for the hearing.

Thereafter the participants were provided the opportunity to present their affirmed testimony, to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

Additionally, the tenant was questioned about the amount of her monetary claim, as she failed to provide sufficient particulars of her claim for compensation, as is required by section 59(2)(b) of the Act. Additionally, Rule 2.5 of the Rules states that the applicant must submit a detailed calculation of any monetary claim being made and copies of all other documentary and digital evidence to be relied on in the proceeding. The applicants are provided with instructions in the application package as to these evidence requirements.

The objective of the Rules is to ensure a fair, efficient, and consistent process for resolving disputes for landlords and tenants.

The tenant submitted that the amount requested was the equivalent of 13 months' rent. The representative said that they thought the claim was for the equivalent of 12 months rent under the tenancy agreement and did not understand the claim also included a claim for another month's rent.

I considered whether or not to dismiss the tenant's application with leave to reapply, due to her failure to provide a calculation or breakdown. However, as the representative was ready to proceed on the claim for 12 months' compensation, I provided the tenant with a choice. The tenant was offered an opportunity to withdraw her entire claim in order to file a proper application for dispute resolution or proceed on the claim for 12 months' compensation.

The tenant chose to proceed on the claim for the equivalent of 12 months' rent.

I note that the two year limitation period for filing an application, in this case, expired on February 10, 2021, as this tenancy ended on February 10, 2019.

I also note that at the end of the hearing, the tenant inquired whether she could make another application for the additional month's compensation. I informed the tenant that

under the Act, a party may not divide a claim and further, the time has expired for the parties to make a further application regarding this tenancy, as noted above.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation from the landlord and to recovery of the filing fee paid for this application?

Background and Evidence

The tenant submitted two written tenancy agreements, with the original tenancy agreement showing a tenancy start date of July 1, 2016, for a monthly rent of \$2,200, and a renewed tenancy agreement during the tenancy, with a monthly rent of \$2,400.

The monthly rent at the end of the tenancy was \$2,400.

The tenant submitted she was served a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) by the landlord. This Notice was dated January 30, 2019, was signed by the landlord, served on the tenant, and listed an effective move-out date of March 31, 2019. Filed in evidence was a copy of the Notice.

The tenant submitted further that they chose to accept that the tenancy was ending as they vacated the rental unit by February 10, 2019, without filing an application to dispute that the Notice was valid.

As a reason for ending the tenancy, the Notice listed that the rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child, or the parent or child of that individual's spouse).

The tenant said that she knows for a fact the landlord or close family member did not move into the rental unit, as she drove by the rental unit many times. Further, the tenant said that she was told by a rental agency that the rental unit has been rented out many times, although she could not get documentation of this as she was not a lawyer. The tenant said that the rental unit was rented to a family of another nationality different from the landlord and that is why she knows the landlord's daughter did not move in.

The tenant submitted that she sent her Application for Dispute Resolution, evidence, and Notice of Hearing (application package) to the landlord, using the same address she always used.

The tenant said that she had witnesses to the landlord or family member not moving in.

The tenant referred to text messages not in evidence.

Also filed in evidence by the tenant was an undated screen shot showing a house for rent, but apparently was from 2021.

The tenant submitted she is entitled to compensation equivalent to 12 months' rent, or the amount of \$28,800, as the landlord has not used the rental unit for the stated purpose listed on the Notice.

**Landlord's response –**

The landlord, through their representative, submitted that the landlord's daughter moved into the rental unit shortly after the tenant vacated and stayed there until 2020. The representative said that the landlord's daughter was pregnant at the time and when the daughter purchased her own home in 2020, the landlord sold the residential property in January 2021.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party.

The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

In this case, the tenant, who claims the landlord has not used the rental unit for the stated purpose listed on the Notice, has the burden of proof to substantiate her claim on a balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In the case before me, the undisputed evidence shows that the tenant was issued a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act. In this case, the Notice listed the rental unit will be occupied by the landlord or a close family member (parent, spouse or child, or the parent or child of that individual's spouse).

Section 51(2) provides that if 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 if 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, the tenant is entitled to compensation equivalent of 12 months' rent under the tenancy agreement.

In this case, I find the tenant submitted insufficient evidence to support her claim.

The tenant testified that she drove past the rental unit many times. It was not clear when these drive-bys occurred, how many times, or what the tenant observed. I am not sure how this proves that the rental unit was not used for the stated purpose. The tenant testified that she was told by a rental agency that the rental unit was rented several times, yet there was no proof other than an undated, screen shot of a rental listing, which appeared to be from 2021. I would have expected the tenant to provide proof of rental listings for the months after the tenancy ended, not from this year.

The tenant testified that she had witnesses to support her version of events, yet the witness were not present to provide their testimony.

The tenant testified about some content in a text message, yet the tenant did not provide this evidence.

The landlord's representative said the landlord's daughter moved into the rental unit after the tenancy ended and stayed there until 2020, when she purchased her own home. The representative said without dispute that the rental unit was sold in 2021.

It appeared to me that the tenant was unprepared to provide sufficient evidence as she mistakenly believed the landlord had the burden to prove the merits of the tenant's application.

I also find the landlord's representative provided an equally probable version of events contradicting the tenant's evidence.

### Conclusion

As a result of the above findings, I find the tenant submitted insufficient evidence that the landlord did not use the rental unit for the stated purpose.

Therefore, I dismiss the tenant's application for monetary compensation and for recovery of the filing fee due to insufficient evidence.

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

Dated: May 10, 2021

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Residential Tenancy Branch