



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing convened as a Tenant's Application for Dispute Resolution, filed on January 30, 2021, in which the Tenant requested monetary compensation in the amount of \$17,600.00 and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on June 3, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter—Date and Delivery of Decision

The hearing of the Tenant's Application concluded on June 3, 2021. This Decision was rendered on July 14, 2021. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude,

77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30 day period.

### Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord pursuant to section 51(2) of the *Act*?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

This tenancy began October 1, 2010. Monthly rent was \$1,450.00 and the Tenant paid a \$700.00 security deposit. The tenancy ended on January 31, 2019. The Tenant applied for Dispute Resolution on January 30, 2021.

In November 10, 2018 the Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use (the "Notice"). The reasons set forth on the Notice were 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 seeks monetary compensation pursuant to section 51(2) of the *Act*, alleging the Landlord did not use the rental unit for the purpose stated on the Notice. The Tenant submits that unit was vacant for months and was then renovated to build a basement suite. The Tenant argues that if they wanted it to be renovated, they needed to issue a four-month notice, not a two month notice.

The Tenant's counsel also submitted that it was the Landlord's grandson who moved into the rental unit (as he was attending the local University) who does not qualify as a "close family member" pursuant to section 49 of the *Act*.

In response to the Tenant's claim, the Landlord's son, J.P., testified on behalf of the Landlord. He confirmed that the Landlord's grandson moved into the rental unit. He noted that they informed the Tenant of this from the beginning as well as discussing with her their plan to renovate parts of the basement to accommodate the grandson.

J.P. further stated that the Tenant accepted the end of the tenancy and was aware the Landlord's grandson was moving in. He noted that she could have disputed the Notice

if she believed it was ineffective, but rather she accepted the Notice and moved from the rental unit.

### Analysis

The Tenant seeks monetary compensation pursuant to section 51 of the *Act*, which reads as follows:

#### **Tenant's compensation: section 49 notice**

**51** (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1)A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2)If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2)Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), 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.

The reasons cited on the Notice for ending the tenancy were that the property would be occupied by a close family member. The undisputed evidence before me is that the rental unit was occupied by the Landlord's grandson.

As aptly noted by the Tenant's counsel, a grandson is not a *close family member* pursuant to section 49 which reads as follows:

**49** (1) In this section:

"close family member" means, in relation to an individual,

(a) the individual's parent, spouse or child, or

(b) the parent or child of that individual's spouse;

Despite this, the evidence confirms the Landlord was upfront with the Tenant as to her intentions. At all material times she informed the Tenant that she wanted to reclaim the rental unit so that her grandson could reside in the space while he was attending university. She clearly informed the Tenant of these plans and followed through by having her grandson move into the unit.

In all likelihood, had the Tenant disputed the Notice within the timelines required by section 49, the Notice would have been cancelled due to the fact a grandson is not a *close family member* as defined by the *Act*. However, the Tenant did not dispute the Notice and the validity of the Notice was therefore not addressed.

Whether the Notice was valid at the time of issue is not relevant to the issues I must decide today. The question before me, pursuant to section 51(2) is whether the Landlord used the property for the purpose stated on the Notice. In this case the Landlord indicated the property would be occupied by a close family member and the undisputed evidence is that it was occupied by the Landlord's grandson.

Although the Notice was flawed in that a grandson does not qualify as a *close family member*, the fact is that the Landlord informed the Tenant she was ending the tenancy to have her grandson move into the rental unit and she did just that. Section 51(2) provides compensation to a Tenant whose tenancy ended for improper reasons and where, arguably, there is some element of deception. In this case, the Landlord was upfront and honest with the Tenant about her intentions: her grandson was going to live there while in university and that's what happened.

I agree with the Landlord's son's submissions that the communications surrounding the Notice are relevant. The Tenant confirmed that it was always her understanding that the Landlord's grandson would move into the rental unit. The documentary evidence also confirms that the Landlord informed the Tenant they would do some minor renovations to prepare the unit for her grandson. In all the circumstances, the Landlord was honest in their communications with the Tenant and used the property for the purpose she stated both on the Notice and in communications with the Tenant.

I therefore find the Landlord used the property for the stated purpose on the Notice. Accordingly, I find the Tenant is not entitled to compensation pursuant to section 51(2) of the *Act*. I therefore dismiss her claim in its entirety.

### Conclusion

The Tenant's claim is dismissed without leave to reapply.

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: July 14, 2021

---

Residential Tenancy Branch