



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFT, MNETC**

### Introduction

This reconvened hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The respondent was represented by their family member who acted as agent (the "Purchaser").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the filing fee from the Purchaser?

## Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties do not disagree on the pertinent facts. The monthly rent for this periodic tenancy was \$1,700.00 payable on the first of each month. The tenancy ended in accordance with a 2 Month Notice to End Tenancy for Landlord's Use dated September 25, 2020. The 2 Month Notice was issued by the previous owner of the property who indicated the reason for the issuance of the notice is that:

*All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

The purchaser named in the 2 Month Notice is the respondent for the present application.

The tenancy ended on November 30, 2020, in accordance with the 2 Month Notice. The Purchaser testified that the sale of the rental property closed in December 2020. The parties agree that the purchaser never resided in the rental unit and the property was placed back on the market and sold in March 2021 to unrelated purchasers.

The tenant now seeks a monetary award in the amount of \$20,400.00 the equivalent of 12 months rent under the tenancy agreement. The tenant also seeks additional monetary awards for the cost of storage and moving they incurred.

The Purchaser explained that the Purchaser's grandfather passed away on December 11, 2020 changing their plans to occupy the rental unit. The Purchaser submits that "My grandfather was supposed to move to the house with me as he was financially going to help me paying the mortgage payments, property tax and all the other costs associated with the house. I was not in the situation to afford all those payments by myself." The Purchaser submitted into documentary evidence written submissions, a death certificate and funeral services contract.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51(2) of the *Act* states if:

- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
- (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent to 12 times the monthly rent payable under the tenancy agreement.

In the 2 Month Notice the reason provided for the tenancy to end is that the purchaser or a close family member will occupy the rental unit. The parties agree that the rental unit was never occupied by the purchaser or their close family member.

I accept the evidence of the parties that the purchaser failed to accomplish the stated purpose of the 2 Month Notice, to occupy the rental unit, and have instead sold the property to new owners.

Section 51(3) provides that:

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

Residential Tenancy Policy Guideline 50 provides some examples of extenuating circumstances including death and wildfires. The Guideline specifically cites changing one's mind or failing to adequately budget to be examples of circumstances that may not be extenuating. An example provided of a situation that may be considered extenuating is:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.

I find the evidence of the circumstances in this instance to not be reasonably characterized as extenuating. I find little documentary evidence in support of the purchaser's submission that the grandfather was going to occupy the rental unit or that they were going to be taking on the financial burden for the property. The 2 Month Notice solely lists the respondent as the purchaser. If the grandfather was involved in the transaction as the purchaser submits, it would be reasonable to expect there would be some paperwork listing their name as a party to the purchase and sale of the rental unit. If the grandfather was simply providing financial assistance to the purchaser as a family member it would be reasonable to expect some documentary evidence of the purchaser's limited financial means would have been submitted.

I find the purchaser's submission that they were wholly relying upon the financial support of an 89-year old man to make the monthly mortgage payments, property tax payments and other costs associated with home ownership to strain credulity. The purchaser characterized the grandfather's intended contribution not as a one-time gift towards a down payment as may be expected, but ongoing financial support without which the continued ownership and maintenance of the property would be untenable. I find little documentary evidence to support that the ongoing financial contributions from their grandfather was a necessary component of residing in the rental unit as stated on the 2 Month Notice. In any event, I find that relying upon the ongoing support of an 89-year old in order to afford monthly payments and upkeep of the property to be more reasonably characterized as poor planning and failing to adequately budget for the costs of ownership. Circumstances which are characterized in the Policy Guideline as not extenuating circumstances.

I find that the circumstances before me do not meet the reasonable characterization of extenuating circumstances and consequently the purchaser is not excused from their obligation under section 51(2) of the Act to pay the tenant an amount equivalent to 12 times the monthly rent of \$1,700.00 in the amount of \$20,400.00.

I find little support for the balance of the tenant's monetary claim. I find that costs of storage and moving are not losses attributable to any breach on the part of the landlord or purchaser but simply the costs that would have been incurred in any event when vacating the rental unit. I further note that the tenant has provided little documentary evidence in support of this portion of their application, submitting no receipts, invoices or bills supporting that they have incurred any expenditures. Accordingly, I dismiss this portion of the tenant's application without leave to reapply.

As the tenant was primarily successful in their application I allow them to recover their filing fee from the respondent.

### Conclusion

I issue a monetary order in the tenant's favour as against the purchaser in the amount of \$20,500.00. The purchaser must be served with this Order as soon as possible. Should the purchaser fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 12, 2021

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Residential Tenancy Branch