



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC, FFT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on February 23, 2021, wherein the Tenant requested monetary compensation in the amount of \$14,500.00 from the Landlord pursuant to section 51(2) of the *Residential Tenancy Act* ("Act") as well as recovery of the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on July 13, 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.

### Issues to be Decided

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

### Background and Evidence

This tenancy began October 23, 2010 and ended on January 15, 2021. The Tenant paid \$1,200.00 in rent as well as a \$600.00 security deposit.

The Landlord personally served the Notice on the Tenant on January 16, 2021. The reasons cited on the Notice were as follows:

- 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).
- All of the conditions for the 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 close family member intends in good faith to occupy the rental unit.

Documentary evidence filed by the Landlord indicates the Landlord informed the Tenant it was his intention to either have his son reside in the rental unit *or* sell the property. The Landlord testified that he was very honest with the Tenant that either his son would move in, or the property would be sold. As early as September 6, 2021 the Landlord informed the Tenant that he was intending to sell the property and that his realtor would be in touch. Other text communication confirms that the property was actively listed for sale and that showings of the property occurred before the tenancy ended. Copies of these text communications were provided in evidence before me.

The Tenant confirmed it was his understanding the Landlord intended to have his son reside in the rental unit *or* sell the property.

### 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 Landlord indicated two reasons for ending the tenancy on the Notice; that the property would be occupied by a close family member *and* that the property had sold. These reasons were not sufficiently filled out in that the Landlord failed to indicate *which* family member was intending to reside in the property and the details of the purchaser. As noted during the hearing, these omissions would have likely resulted in the Notice being cancelled had the Tenant disputed the Notice within the time required by section

49 of the *Act*. However, the Tenant failed to dispute the Notice and moved from the rental property; as such the validity of the Notice is no longer relevant.

The question before me 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 or be sold. The undisputed evidence is that the property was sold.

Although the Notice was flawed in that it was missing information, and included two reasons for ending the tenancy, the fact is that the Landlord informed the Tenant he was ending the tenancy to sell the property and 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 his intentions: he was either going to have his son move into the property or he was going to sell.

I 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 his 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 13, 2021

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Residential Tenancy Branch