



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**

**MNETC**

### **Introduction**

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67.

NS attended as agent for the landlord (“the landlord”). The tenant attended with the advocate JC (“the tenant”). All parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained. The addresses to which the Decision would be sent were confirmed.

### **Preliminary Matter - Prohibition Against Recordings**

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 the requirement and further confirmed they were not making recordings of the hearing.

### **Issue(s) to be Decided**

Is the tenant entitled to the relief requested?

### **Background and Evidence**

A copy of the tenancy agreement was submitted. The parties agreed on the following background of the tenancy.

<b>INFORMATION</b>	<b>DETAILS</b>
Type of tenancy	Monthly
Date of beginning	Apprx. 9 years ago
Date of ending	November 6, 2020
Monthly rent payable on 1 <sup>st</sup>	\$640.00
Security deposit	\$275.00
Date of application of tenant	April 26, 2021

The parties agreed the landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") as follows:

<b>INFORMATION</b>	<b>DETAILS</b>
Type of Notice	Two Month Notice
Date of Service	July 17, 2020
Effective Date of Notice	September 30, 2020
Reasons for Issuance	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 the individual's spouse).
Order of Possession granted	November 6, 2020
Tenant vacated unit	November 6, 2020.

The landlord testified as follows. He extensively renovated the unit after the tenant moved out. He and his wife moved into the unit early December 2020 (about a month

after the tenant moved out), have lived there ever since and continue to do so. The landlord submitted a copy of his Driver's License which showed the unit as his permanent residence. The landlord also submitted a copy of a telephone invoice which indicated the address of the unit for billing.

The tenant asserted that the landlord did not occupy the unit as required under the Act and the tenant is entitled to 12 months as compensation. The only evidence submitted by the tenant in support of this assertion was information that the landlord issued a similar Two Month Notice in March 2021 to another tenant in the building.

The landlord replied as follows. The apartment building in which the unit is located is undergoing renovations. Storage of building materials is on one side of the building; stored supplies are not visible from the unit and theft is a problem. The landlord acknowledged he issued a Two Month Notice. The landlord offered to switch units with an occupant of another unit which is located on the preferred side of the building. The location of the unit would allow him to keep surveillance over the building materials. However, the arrangement was not completed, the other tenant did not want to switch units, the landlord and his wife continue to reside in the unit and have no plans to move out. The Two Month Notice was cancelled. The landlord testified he does not have a second residence.

The tenant requested monetary compensation equal to 12 months rent as the landlord had plans to vacate the unit within the 6-month period. The landlord requested that the tenant's claim be dismissed without leave to reapply.

### Analysis

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here.

The relevant and important aspects of the claims and my findings are set out below.

### *Two Month Notice*

Section 49 of the Act allows a landlord to end a tenancy if the landlord :

1. intends, in good faith, to occupy the rental unit, or a close family member intends, in good faith, to occupy the unit;

2. is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit;
3. enters into an agreement in good faith to sell the rental unit, all conditions of the sale are satisfied, and the purchaser asks the landlord, in writing, to give notice to end the tenancy because the purchaser or a close family member intends, in good faith, to occupy the unit

A tenant may apply for an order for compensation under section 51 of the RTA if a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

I find the tenant has not met the burden of proof of the claim for the following reasons.

I find the landlord provided credible testimony supported by documentary evidence to establish that he moved into the unit after renovations and continues to live there as his permanent residence. Based on the landlord's believable and supported testimony, I find the landlord used the rental unit for the stated purpose in the Two Month Notice for at least six months beginning within a reasonable period after the tenant moved out.

I find the tenant's application fails. I dismiss the tenant's application in its entirety without leave to reapply.

### Conclusion

I dismiss the tenant's application in its entirety 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: October 26, 2021

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Residential Tenancy Branch