



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

On May 3, 2021, the Tenant applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking compensation for money owed or damage or loss under the Act, Regulation, or tenancy agreement.

The matter was scheduled as a teleconference hearing. The Landlord and Tenant were present at the hearing. At the start of the hearing, I introduced myself and the participants.

The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The Landlord confirmed that he received a copy of the Tenant’s documentary evidence. The Landlord did not submit any documentary evidence. The parties were informed that recording the hearing is not permitted.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

- Is the Tenant entitled to money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

### Background and Evidence

The Tenant testified that his tenancy began in September 2019. Rent in the amount of \$700.00 was due to be paid to the Landlord by the first day of each month.

The original Landlord put the rental unit up for sale. The purchaser asked the original Landlord to serve the Tenant with a Two Month Notice to End Tenancy for Landlords Use of Property ("the Two Month Notice"). The Landlord who purchased the residential property wanted vacant possession of the rental unit.

The effective date of the Two Month Notice is April 1, 2021. The Tenant accepted the Two Month Notice and moved out of the rental unit on March 30, 2021. The Tenant provided a copy of the Two Month Notice and a copy of the buyers notice to seller to issue the Two Month Notice for the buyer to occupy the unit.

The Tenant testified that the reason cited for ending the tenancy within the Two Month Notice is:

*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 a close family member intends in good faith to occupy the rental unit.*

The Tenant testified that he moved to a new rental unit located a block away from the rental property and when he drove past the rental unit, he observed a lock box attached to the doorknob. The Tenant stated that he did not observe a "for sale" sign on the property. The Tenant stated that he researched the property and discovered that it was listed "for sale". The Tenant stated that the rental unit was again sold on April 27, 2021.

The Tenant provided a copy of a listing showing that the rental unit was listed for sale.

The Tenant is seeking compensation of \$8,400.00 which is twelve months of rent he paid under his tenancy agreement.

In reply, the Landlord (purchaser) confirmed that he listed and sold the rental property within one month of purchasing it. He testified that he purchased the home for \$677,000.00 and sold it for \$788,000.00.

The Landlord was asked if he has any exceptional circumstances that would excuse him from having to pay compensation to the Tenant for failing to occupy the rental unit, and he replied that he made a "no subject to" offer on the property and later found that he could not secure a mortgage for the property. He stated that he did not know that he could not get a mortgage.

## Analysis

Residential Tenancy Policy Guideline # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. The Guideline provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

*"Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement."*

Section 51 (2) of the Act provides:

*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.*** **[my emphasis]**

*(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.*

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

### Compensation for Breach of Section 51

I find the Landlord immediately sold the rental unit rather than using the rental property for the reason stated within the Two Month Notice for a six-month duration. Pursuant to section 51(2) of the Act, the Landlord must pay the Tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I have considered whether or not there were extenuating circumstances present that stopped the Landlord from accomplishing the purpose of the notice. After considering the Landlord's submission regarding financing for the home, I find that the Landlord should have ensured that he had financing before taking the action to evict the Tenant from the rental unit. I find that the Landlord's failure to secure financing is not an extenuating circumstance that would make it unjust for him to have to pay compensation to the Tenant.

### Filing fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$8,500.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

### Conclusion

The Landlord did not use the rental unit for the purpose stated within the Two Month Notice for a six-month period after the effective date of the Notice. The Landlord does not have an extenuating circumstance that would make it unjust for him to have to pay compensation to the Tenant.

The Landlord must pay the Tenant \$8,400.00 which is 12 months' rent payable under the tenancy agreement.

The Tenant is granted a monetary order in the amount of \$8,500.00 which includes the cost of the filing fee.

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: November 03, 2021

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Residential Tenancy Branch