



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT, MNDCT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on May 6, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation;
- an order granting the return of the filing fee.

The Tenant, the Purchaser M.K., and the Purchaser's Counsel A.E. attended the hearing at the appointed date and time. The Purchaser referred to a witness A.G., whom the Purchaser did not call upon during the hearing. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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(s) to be Decided

1. Is the Tenant entitled to a Monetary Order for money owed or compensation for loss under the *Act*, regulation, or tenancy agreement and recovery of the filing fee pursuant to sections 51, 67 and 72 of the *Act*?

Background and Evidence

The Tenant testified that her tenancy started on December 1, 2017. The Tenant stated that near the end of her tenancy, she was required to pay rent in the amount of \$1,845.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$900.00. The parties agreed that the tenancy ended on February 28, 2021. The Tenant provided a copy of the tenancy agreement and a bank statement in support of the monthly rent amount.

The Purchaser testified that she instructed the Seller to serve the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of the Property dated December 30, 2020 with an effective vacancy date of February 28, 2021 (the "Two Month Notice"). A copy of the Two Month Notice provided into evidence stated that the intended purpose of the Two Month Notice is;

*"All the conditions of 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 parties testified and agreed that the Tenant vacated the rental unit in compliance with the Two Month Notice. The Tenant has applied for monetary compensation equivalent of 12 times the monthly rent payable under the tenancy agreement as the Tenant is of the impression that the Landlord has not accomplished the stated purpose of the Two Month Notice.

The Purchaser stated that she experienced marital problems in September 2020. The Purchaser stated that she decided to separate from her husband and wished to move out of his home. The Purchaser stated she began to look for a different residence to purchase, for her and her child to occupy. The Purchaser confirmed that she purchased the rental unit and took possession of the vacant unit on March 4, 2021. The Purchaser stated that she began to move some of her items into the unit, however, by March 6, 2021 had decided to against occupying the rental unit, and remained in her husband's home in an attempt to reconcile the relationship. The Purchaser stated that she found a new occupant for the unit and began a tenancy on April 1, 2021.

The Purchaser stated that the extenuating circumstance which prevented the Purchaser from accomplishing the intended purpose of the Two Month Notice was that by moving into the unit, the Purchaser would be putting undue hardship on her child as a result of

moving out of the family home, transferring schools, and being away from the father which is likely to have been traumatizing on the child. The Purchaser stated that ultimately, she did what was best for the benefit of her family and had no other option but to re-rent the rental unit. The Purchaser's Counsel also indicated that the *Act* allows for special consideration to those impacted by family violence.

The Tenant stated that the Purchaser has not provided evidence to support she is separated from her husband, nor that the Purchaser's child was transferring schools. The Tenant stated that she is of the impression that the Purchaser purchased the unit with the intent to re-rent the unit at a higher rent.

### Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

According to Section 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, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2). Under section 51(3) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

Residential Tenancy Policy Guideline 50 provides information to determine what qualifies as exceptional circumstances:

An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control.

Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal, but did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.

The Tenant is claiming compensation in the amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement as the Purchaser did not

accomplish the intended purpose of the Two Month Notice for at least six months after the effective date of the notice.

I accept that the Purchaser instructed the Seller to serve the Two Month Notice to the Tenant as the Purchaser and her child intended to occupy the unit. I accept that the Tenant complied with the Two Month Notice and vacated the rental unit on February 28, 2021.

I accept that the Purchaser did not occupy the rental unit after gaining vacant possession of the rental unit on March 4, 2021. I accept that the Purchaser instead re-rented the unit as of April 1, 2021 without occupying the rental unit for at least 6 months.

The Purchaser explained her reasoning for not accomplishing the stated purpose of the Two Month Notice was due to an exceptional circumstance of wanting to avoid putting undue hardship on her child as a result of moving out of the family home, transferring schools, and being away from the father which is likely to have been traumatizing to the child. The Purchaser stated that ultimately, she did what was best for the benefit of her family and had no other option but to re-rent the rental unit.

In this case, I find that the Purchaser's reasoning for not accomplishing the stated purpose of the Two Month Notice does not constitute an extenuating circumstance. I find that the Purchaser through reasonable planning could have anticipated the potential impacts of moving prior to purchasing the unit and ultimately ending the tenancy with the intent of occupying the unit with her child. I find that days after the Tenant vacated the rental unit in compliance with the Two Month Notice, the Purchaser changed her mind and decided to re-rent the unit in less than one month after gaining possession and did not fulfill the requirements of Section 49 of the Act.

During the hearing, the Purchasers Counsel stated the *Act* allows for special consideration to those impacted by family violence. I note that Section 45 of the Act refers to the Tenant's eligibility to end a fixed term tenancy early for family violence. I find that this Section is not applicable to this dispute.

Based on the above I find that the Tenant is entitled to compensation in the amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement. I find that the rent near the end of the tenancy was \$1,845.00. As such, I award the Tenant monetary compensation in the amount of ( $\$1,845.00 \times 12 = \mathbf{\$22,140.00}$ ), pursuant to section 51(2) of the *Act*. As the Tenant was successful in their application, I also find that they are entitled to the recovery of the **\$100.00** filing fee pursuant to section 72 of

the *Act*. As a result of the above and pursuant to section 67 of the *Act*, the Tenant is therefore entitled to a Monetary Order in the amount of \$22,240.00.

Conclusion

The Purchaser has not taken steps to accomplish the stated purpose for ending the tenancy under section 49 for at least six months after the effective date of the Two Month Notice. Pursuant to section 51, 67, and 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$22,240.00.

The Tenant is provided with this Order in the above terms and 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: November 04, 2021

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Residential Tenancy Branch