



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT

### Introduction

The tenant filed an Application for Dispute Resolution on May 13, 2021 seeking compensation from the landlord. This is related to the landlord's issuance of a Notice to End Tenancy for the landlord's Use of Property (the "Two-Month Notice") issued on October 6, 2020. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Act* on November 12, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The tenant attended the hearing, and they were provided the opportunity to present oral testimony and make submissions during the hearing. The landlord did not attend the telephone conference call hearing.

### Preliminary Matter

To proceed with this hearing, I must be satisfied that the tenant made a reasonable attempt to serve the landlord with the Notice of Dispute Resolution for this hearing. This means the tenant must provide proof that the document has been served at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

In the hearing, the tenant set out how they served this notice to the landlord, via registered mail on May 26, 2021. They presented a receipt of their payment for registered mail, and an image of the registered mail official receipt with a tracking number. This was to the address provided by the landlord on the Two-Month Notice.

They sent an additional piece to the landlord on June 3, using the same method.

Based on these submissions, I accept they served to the landlord the notice of this hearing and their evidence in a manner complying with section 89(1)(c) of the *Act*. The hearing thus proceeded in the landlord's absence.

### Issue(s) to be Decided

Is the tenant entitled to monetary compensation for the Two-Month Notice, pursuant to s. 51 of the *Act*?

### Background and Evidence

The tenant did not provide a copy of the tenancy agreement. They testified this was the third landlord they had as the tenant, with this landlord starting in "2019 or beginning 2020". The tenant paid \$600 per month rent, living there since 2010. This is the landlord that issued the Two-Month Notice. The tenant left the unit on December 31, 2020.

The landlord issued the Two-Month Notice on October 6, 2020, providing the tenancy end date of December 31, 2020. On page 2, the landlord indicated the rental unit would be occupied by "The landlord or the landlord's spouse."

The tenant provided testimony on the events following their move-out:

- the neighbours who lived upstairs told the tenant here that nobody had moved into the rental unit, and the rental unit remained empty
- in mid-April 2021, some other family moved in
- the tenant here moved into another basement rental unit, close by to this property, 2 or 3 houses away
- the tenant here has to pass by the rental unit house frequently

The tenant here wasn't aware of this at first, and assumed the landlord and/or their spouse would be moving in. The landlord visited to them in the rental when they were the new landlord, and while the landlord was known to the upstairs neighbours, they identified it was not the landlord and/or their family who moved into the rental unit. Additionally, the occupants now living in the rental unit are a different ethnicity from the landlord who the tenant and the upstairs neighbours know to be the landlord.

The upstairs neighbours provided a letter to the tenant, undated. This provides the detail that the basement rental unit remained empty, until April 2021, when a couple moved in. Each of the five neighbours signed the letter.

### Analysis

Under s. 49(5) of the *Act* a landlord may end a tenancy if a purchaser, or a close family member, intends in good faith to occupy the rental unit.

A tenant's compensation in these circumstances is governed by s. 51 which provides:

(2) Subject to subsection (3), the landlord . . . must pay the tenant . . . 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.

In order to make a finding of fact, and thereby determine an entitlement to compensation, I shall determine whether the landlord a) took steps to accomplish the stated purpose for ending the tenancy; or b) used the unit for family occupancy for at least 6 months' duration. If the steps taken, or family use, are not established in the evidence, I shall then determine whether extenuating circumstances prevented this.

I find the tenant presented clear evidence the landlord did not use the unit for their family occupancy as they so indicated on the Two-Month Notice. This is a breach of the *Act* governing the landlord ending the tenancy in this way. Based on the tenant's evidence, I find there were no steps taken toward the stated purpose of the reason for the Two-Month Notice.

The landlord did not attend the hearing; therefore, there was no presentation of extenuating circumstances from the landlord. I find there are no such circumstances present.

For these reasons, I find the tenant has presented sufficient evidence to show they are entitled to compensation for a breach of the *Act* by the landlord. I grant the tenant compensation in the amount specified by s. 51(2), the equivalent of twelve times the amount of the monthly rent of \$600.

### Conclusion

Pursuant to s. 51 and s. 72 of the *Act*, I grant the tenant a Monetary Order in the amount of \$7,200.00. The tenant is provided with this Order in the above terms, and they must serve it to the landlord as soon as possible. Should the landlord fail to comply with this Order, the tenant may file the Order in the Small Claims Division of the Provincial Court where it may be 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 s. 9.1(1) of the *Act*.

Dated: November 16, 2021

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Residential Tenancy Branch