



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The purchaser was assisted by agent ST (the purchaser). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

### Preliminary Issue – Service

The tenant affirmed that her representative served the notice of hearing and the evidence (the materials) in person. The purchaser confirmed receipt of the materials on June 22, 2021 in person. Based on the testimony offered by both parties, I find the tenant's representative served the materials in accordance with section 89(1)(a) of the Act.

The purchaser did not serve response evidence.

### Issues to be Decided

Is the tenant entitled to:

1. a monetary order in an amount equivalent to twelve times the monthly rent?
2. an authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

The tenant affirmed the tenancy started on July 01, 2017 and ended on August 31, 2020. Monthly rent was \$850.00, due on the first day of the month. The landlord collected and returned a security deposit of \$450.00.

The purchaser stated he purchased the rental unit on August 31, 2020 and that he is not aware of the tenancy details.

The tenant testified she received a Two Month Notice to End Tenancy for Landlord's Use (the Notice) on June 28, 2020. A copy of the Notice was submitted into evidence. It states:

Reasons for this Two Month Notice to End Tenancy (check the box that applies)

- all the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing to give the Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The effective date of the Notice was August 28, 2020. The Notice indicated the purchaser is the respondent.

The tenant said she received a letter signed by the purchaser attached to the Notice:

You have to move out since me, [respondent], the new and current owner has chosen to use the living space for myself. Therefore, I no longer want to rent out the property.

We have tried our best to provide you with enough time to relocate yourselves with this two month notice to move. We hope you understand and can move out by August 28, 2020. Please and thank you.

Sincerely,  
[purchaser]

The tenant affirmed on July 20, 2020 the purchaser visited the rental unit with his family and he was aware that the rental unit was tenanted.

The purchaser stated he did not ask the seller to serve the Notice and that he is not aware of the letter submitted into evidence. Later the purchaser testified he told the seller that he wanted to have vacant possession.

The purchaser said that he occupied the rental suite from September 01, 2020 to November 01, 2020 and his son occupied the rental suite for about one month after he moved out. On December 15, 2020 the purchaser rented the suite to a new tenant because the purchaser had financial difficulties during the renovation of the main house next to the rental suite.

### Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 49(5) of the Act states:

- (5)A landlord may end a tenancy in respect of a rental unit if:
  - (a) the landlord enters into an agreement in good faith to sell the rental unit,
  - (b) all the conditions on which the sale depends have been satisfied, and
  - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
    - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
    - (ii) the purchaser 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.

Section 51(2) of the Act provides that the purchaser, in addition to the amount payable under subsection (1), must pay an amount that is 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.

Residential Tenancy Branch Policy Guideline 50 states:

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord 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 (except for demolition).

The purchaser's testimony about the Notice was contradictory. The tenant's undisputed testimony that the purchaser visited the rental unit on July 20, 2020 was convincing. I find the Notice was served because the purchaser asked the landlord to serve the Notice.

I note that I am not finding if the purchaser asked the seller in writing to serve the Notice. However, I find that it is not relevant if the purchaser asked the seller in writing to serve the Notice, as the purchaser admitted he was aware the rental unit was tenanted and that he asked the landlord for vacant possession.

Per section 51(2) of the Act, as the Notice's effective date was August 28, 2020, the purchaser's or his close family must have occupied the rental unit from August 29, 2020 to February 28, 2021. Residential Tenancy Branch Policy Guideline 2A states:

6-month occupancy requirement

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).

[...]

E. CONSEQUENCES FOR NOT USING THE PROPERTY FOR THE STATED PURPOSE

If a tenant can show that a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:

- taken steps to accomplish 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

the tenant may seek an order that the landlord pay the tenant additional compensation equal to 12 times the monthly rent payable under the tenancy agreement.

The purchaser affirmed the rental unit was rented on December 15, 2020. Thus, the purchaser or his family did not occupy the rental unit from August 29, 2020 to February 28, 2021.

Based on the tenant's convincing and undisputed testimony, I find that monthly rent when the tenancy ended was \$850.00.

As such, per section 51(2) of the Act, the tenant is entitled to a monetary award in the amount of 12 times the monthly rent payable. Thus, I award the tenant a monetary award in the amount of \$10,200.00 (\$850.00 x 12).

As the tenants were success with their application, pursuant to section 72 of the Act, I authorize them to recover the \$100.00 filing fee.

Thus, the tenant is entitled to a monetary award in the amount of \$10,300.00.

### Conclusion

Pursuant to sections 51(2) and 72 of the Act, I grant the tenant a monetary award in the amount of \$10,300.00.

The tenant is provided with this order in the above terms and the purchaser must be served with this order in accordance with the Act. 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: December 07, 2021