



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC, FFT

### Introduction

The Tenant filed an Application for Dispute Resolution on June 17, 2021 seeking compensation from the Purchaser. This is related to former Landlord's issuance of a Notice to End Tenancy for the landlord's Use of Property (the "Two-Month Notice"). issued on March 11, 2021. Additionally, they applied for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Act* on January 11, 2022. 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 Purchaser, named as the Respondent, did not attend the telephone conference call hearing.

### Preliminary Matters

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

The Tenant set out how they served this Notice to the Purchaser via registered mail on July 16, 2021. This is three days after the Residential Tenancy Branch issued the Notice to the Tenant. This is the time limit set in the *Residential Tenancy Branch Rules of Procedure*. The Tenant provided they sent this Notice to the Purchaser's home and work addresses, with the registered mail to the home returned to the sender. One

address used by the Tenant was that provided on the Two-Month Notice, verified by the document called 'Buyers Notice to Seller for Vacant Possession' that appears in the Tenant's own evidence. The Tenant stated that the package they sent included all the evidence they intended to rely on for this hearing.

Based on these submissions, and proof in the form of tracking information, I accept the Tenant served the Purchaser with Notice of this hearing and their evidence in a manner complying with s. 89(1)(c) of the *Act*. The hearing thus proceeded in the Purchaser's absence.

The Tenant also provided the Notice and evidence to a third-party realtor, and they also named that party as a Respondent on their Application. On my review of the evidence and with statements from the Tenant in the hearing, I find this third-party is not a proper Respondent, having no notion of the tenancy, or the purchase/sale of the rental unit. I have amended the Tenant's Application to exclude this third-party as a Respondent.

#### Issues to be Decided

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

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

#### Background and Evidence

Though the Tenant did not provide a copy of the tenancy agreement they had with their former Landlord, they spoke to the relevant details in the hearing. The agreement started in April 2020, and the Tenant desired an arrangement that was more long-term, as did the Landlord at that time. The Tenant moved out on May 5, 2021.

The Tenant paid \$1,950 per month in rent from the start of the agreement through to the end of the tenancy. This amount forms the basis for their claim for compensation.

The Tenant provided a copy of the Two-Month Notice issued by their former Landlord on March 11, 2021. This gave the move-out date of June 2, 2021. On page 2, the indication is that the conditions of a sale have been completed, and the Purchaser asks

for service of the Two-Month Notice for their own occupancy of the rental unit. The Purchaser's name and address was complete on page 2.

The Tenant in their evidence provided the Purchaser's instruction to the former Landlord, using a realtor-association form created for that purpose, dated March 11, 2021. The Tenant's former Landlord provided this document to the Tenant on their request. The address and name of the Purchaser on this form matches that provided on page 2 of the Two-Month Notice.

After the Tenant's move out from the rental unit, they observed that the rental unit stayed empty for quite awhile, as the yard was untended. Their friend advised that the unit was on offer for renters online. The Tenant provided three sets of online advertising material in their evidence:

- date-stamped June 2, 2021, the rental unit is shown as "house for rent" for \$2,900 per month – this ad shows a picture of the rental unit and shows the street address and availability date of "2021/06/15". Page 5 of this document shows the Tenant's own query to the listed agent asking, "is this still available" to which the agent replied "Yes it's available."
- a second ad shows the same rental unit for rent at \$2,650, with same picture and address information
- a third ad on a different posting service, time-stamped June 11, 2021. This gives more information with a description and provides the same street address, for \$2,650 per month.

On their Application, the Tenant provided the total amount of their claim as \$23,500. This is based on 12 months of rent at \$1,950 per month.

### Analysis

Under s. 49(5) of the *Act* a landlord may end a tenancy if a purchaser asks the landlord in writing to end the tenancy, in good faith, for their own occupancy of the rental unit.

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

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant. . . an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that

(a)the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and

(b)the rental unit . . .has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I find the Purchaser, as set out in s. 51, is the party who asked the former Landlord to end the tenancy. The Tenant provided sufficient evidence to establish that the Purchaser did not accomplish the stated purpose for ending the tenancy. That is, the Purchaser did not occupy the unit on their own as stated in the Two-Month Notice. I find the evidence shows the rental unit was advertised as available for rent as early as June 2, 2021, which is the same as the end-of-tenancy date of June 2, 2021 provided on the Two-Month Notice. Two other advertisements verify that the rental unit is on offer to new tenants. Additionally, this was confirmed by the agent responsible for the listing directly to the Tenant here.

Moreover, the instruction form to the former Landlord specifies the Purchaser's instruction that "The Buyer(s) . . . intend in good faith to occupy the Property."

I find this is clear evidence that the Purchaser did not use the unit for their own use as they so specified in the Two-Month Notice. There is no evidence the Purchaser took steps toward occupancy within a reasonable period of time. The online ads provided by the Tenant show active postings online at the start of June. The Purchaser did not accomplish the stated reason for ending the tenancy. This is a breach of the *Act* governing the reason for the Purchaser ending the tenancy.

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 Purchaser. 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 \$1,950. This is \$23,400.

The *Act* s. 72 grants me the authority to order the repayment of a fee for the Application. As the Tenant was successful in their claim, I find they are entitled to recover the \$100 filing fee from the Purchaser.

### Conclusion

Pursuant to s. 51 and s. 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$23,500.00. The Tenant is provided with this Order in the above terms, and they must serve it to the Purchaser as soon as possible. Should the Purchaser 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: January 12, 2022

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Residential Tenancy Branch