



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Nelco properties Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant and the owner of the landlord company (the "owner") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision.

The tenant testified that the landlord was served with this application for dispute resolution via registered mail on August 14, 2021. A Canada Post registered mail receipt to the landlord's address for service was entered into evidence. The tenant testified that the package was returned to sender. The tenant testified that the landlord was then emailed with the application for dispute resolution at the email address provided for service and to the owner on August 23, 2021. The owner testified that the tenant's application for dispute resolution was received but could not recall on what date.

I find that the tenant's application for dispute resolution was served on the landlord via registered mail in accordance with section 89 of the *Act* and the landlord was deemed served with it on August 19, 2021 pursuant to section 90 of the *Act*. Failure of the landlord to pick up registered mail does not circumvent the deeming provisions in section 90 of the *Act*. In any event I find that the landlord was also deemed served with the tenant's application for dispute resolution via email on August 26, 2021, three days after its e-mailing, in accordance with section 89 of the *Act*.

The tenant testified that she served the owner with her evidence via email. The tenant did not provide the dates the evidence was emailed. The owner testified that the tenant's evidence was received via email but did not specify on what dates. I find that the tenant's evidence was served on the landlord in accordance with section 88 of the *Act*.

I note that the tenant entered into evidence RTB Form 51 in which the landlord provided the tenant with an email address for service.

The landlord did not enter any documents into evidence.

### Issues to be Decided

1. Is the tenant entitled to a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 1, 2008 and ended on May 29, 2021. Monthly rent in the amount of \$896.88 was payable on the first day of each month.

The tenant's application for dispute resolution seeks 12 months' rent in the amount of \$10,762.56, pursuant to section 51 of the *Act*.

Both parties agree that an agent of the landlord personally served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") on May 17, 2021. The Two Month Notice states that the tenant must move out of the subject rental property by July 31, 2021 because the rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse). The owner testified that she is the owner of the landlord company.

Both parties agree that the owner's sister moved into the subject rental property. The owner testified that her sister signed the tenancy agreement on July 13, 2021 and moved in shortly after that. The owner testified that her sister does not have a stake in the landlord company.

The tenant testified that a sister is not a close family member and so she is entitled to compensation because the landlord's close family member did not move into the subject rental property.

### Analysis

I accept the testimony lead by both parties that the owner's sister moved into the subject rental property following the tenant's eviction.

Section 49 of the *Act*, states that a close family member, in relation to an individual, is the individual's parent, spouse or child, or the parent or child of that individual's spouse. I find that the owner's sister is not a close family member as defined by the *Act*.

Section 51(2) of the *Act* states that 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.

The Two Month Notice stated that the purpose for ending the tenancy was because the rental unit will be occupied by the landlord or the landlord's close family member. Based on the testimony of both parties, I find that the landlord or the landlord's close family member did not move into the subject rental property, in accordance with the Two Month Notice. Therefore, pursuant to section 51(2) of the *Act*, the tenant is entitled to 12 months' compensation in the amount of \$10,762.56.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

### Conclusion

I issue a Monetary Order to the tenant in the amount of \$10,862.56.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: February 11, 2022

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Residential Tenancy Branch