



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and her counsel and the landlord and his counsel

Both confirmed receipt of each other's evidence and noted no concerns.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for compensation for the landlord not using the rental unit for the stated purpose in a Notice to End Tenancy for Landlord's Use of Property, pursuant to Sections 51, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

Both parties submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on May 1, 2020 for a 1 year and one day fixed term tenancy beginning on May 1, 2020 for a monthly rent of \$1,150.00 due on the 1<sup>st</sup> of each month with a security deposit of \$575.00 paid;
- A copy of a Two Month Notice to End Tenancy for Landlord's Use of Property issued on February 28, 2021, with an effective vacancy date of April 30, 2021, citing the father or mother of the landlord or the landlord's spouse intend to occupy the rental unit.

The tenant submits that she moved out of the rental unit on May 1, 2021. She submits also that on May 27, 2021 the landlord contacted her and asked if she would be interested in renting a one bedroom unit and that on June 24, 2021 the landlord replied to a Facebook post of someone looking for a one bedroom rental unit.

The landlord submitted that when they first purchased the property, they issued a notice to the tenant to end the tenancy for the landlord's mother to move into the rental unit, which the tenant disputed. Before the hearing was conducted the parties resolved that dispute and the notice to end tenancy was withdrawn. The landlord submits a copy of the decision on that file (file number provided on the coversheet of this decision).

The landlord points to the wording of the decision in that case where the tenant had attended the hearing and as the arbitrator recorded, "the tenant informed that she had come to an agreement with the landlord and he has cancelled the notice to end tenancy and the tenancy will continue to the end of the fixed term."

The landlord's counsel submits that this constitutes an agreement that the parties had intended for the tenancy to end at the end of the fixed term. Regardless, as noted above, on February 28, 2021 the landlord issued a Two Month Notice to End Tenancy for Landlord's Use.

The landlord submits that the intention was to have his mother move into the rental unit. The landlord noted the rental unit has an interior door that could be used for access between the rental unit and the main house. However, after the tenant moved out the landlord completed some cleaning and minor renovations to the rental unit so his mother could move in. The landlord submits that on May 25, 2021 his mother received word from the local health authority that she had been booked for knee replacement surgery on June 14, 2021.

The landlord also submits that after they learned more about what their mother's needs and extent of the rehabilitation period, they decided that their mother would not be able to move downstairs.

The landlord has submitted into evidence an email dated September 14, 2021 confirming the landlord's mother had her knee surgery booked on May 25, 2021 for June 14<sup>th</sup> 2021. The landlord also submitted an undated letter indicating a "follow up" appointment at the "Ortho Clinic" for September 10, 2021. The landlord did not provide any evidence to explain the extent or duration of the necessary rehabilitation or recovery period.

Once they made this decision they contacted the tenant to see if she was interested in returning to the rental unit, but she responded that she already had accommodation and was not interested. The tenant submitted into evidence a copy of the text message from the landlord which asks her if she would want to move into a one-bedroom unit – the unit had been a two-bedroom unit under this tenancy.

The landlord submitted that it was an error to offer a one-bedroom unit because had not completed those renovations, but he continued to convert the rental unit. He submitted they did not list the unit as available for rent because they were not sure if the

scheduled surgery would be cancelled, and the landlord's mother moved her belongings into one of the rooms.

The landlord acknowledges that on June 26, 2021 he responded to a Facebook at for someone looking for a one-bedroom suite. He submits that he renovated the basement so that the original two bedrooms from the tenant's rental unit were now used as storage for their mother's and their own belongings and a new bedroom was attached to the kitchen and bathroom of the original rental unit.

The landlord confirmed the one-bedroom unit was now rented out for \$1,100.00 per month. However, the landlord intends to have his mother move into the rental unit after she is well enough to do so. The landlord anticipates this may be in approximately three months.

The landlord submitted that as a result of these events the landlord is not experiencing any benefit from ending the tenancy, in that the rent they are receiving is less than what they were receiving under this tenancy.

### Analysis

Section 49 (3) states subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy if the landlord is a landlord, who is an individual, if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51 states a tenant who receives a notice to end a tenancy under section 49 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. A tenant may withhold the amount authorized from the last month's rent and that amount is deemed to have been paid to the landlord.

In addition, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord, 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, except in respect of the purpose specified in section 49 (6) (a), 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.

Section 51(3) allows that the director may excuse the landlord from paying the tenant the amount required if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as applicable, from:

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
- (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.

Residential Tenancy Policy Guideline 2a states that since there is a separate provision under Section 49 to end a tenancy for non-residential use, the implication that “occupy” means “to occupy for a residential purpose”. The result is that a landlord can end a tenancy for a close family member to occupy the rental unit if they intend in good faith to use the rental unit as living accommodation or as part of their living accommodation.

While good faith is not a requirement for the compensation sought in this case, it is dependent upon whether or not the landlord did what they said they were going to do, I consider that the requirement then would be that the rental unit is used as living accommodation for the landlord's mother – not a place for her to store her or the landlord's belongings.

Neither party disputes that the landlord has not used the rental unit for the stated purpose. The landlord and mother are using the former bedrooms for storage and they have re-rented the kitchen and bathroom from the former rental unit with a new bedroom to a new tenant.

As such, I find the tenant is entitled to the additional compensation totally 12 times the amount of rent according to the tenancy agreement, \$13,800.00, pursuant to Section 51(2) of the *Act*, subject only to consideration of an exemption as outlined in Section 51(3).

Residential Policy Guideline 20 expands on the issue of extenuating circumstances as follows:

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. 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.

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.

While both parties provided good arguments relating to the nature of extenuating circumstances, I find that the question of whether or not the circumstances were anticipated or outside of the control of the landlord go beyond the actual booking of the surgery.

For clarity, the tenant argues that the landlord should have anticipated that a surgery date was imminent as people are put on waitlists for this type of surgery. The landlord submits that despite being on a waitlist there is no indication of when the booking might be made. I agree with both those positions.

Having said that, the landlord has provided no evidence to confirm what they said they took into consideration when they were deciding to not have their mother move into the rental unit, which were the mobility restrictions and the extent of the rehabilitation period. For example, was the intention for their mother to recover from surgery or to wait until the mother had completed her rehabilitation? In addition, why would either event prohibit the mother living in the rental unit.

I find this to be a pertinent issue in this analysis as it pertains also to the landlord's decision to re-rent the unit. Regardless of the landlord's submission that the offer of a one-bedroom unit to the tenant was an error, the landlord decided that they would rent the unit out to either this tenant or a new tenant rather than hold the rental unit vacant until such time as the mother "decides" to move into the unit.

Furthermore, while Section 51(2) requires the landlord to use the property for the stated purpose within a reasonable period after the effective date of the notice, there is nothing in the *Act* or in the policy guidelines that would prevent the landlord from accomplishing that task within a reasonable time after the effective date of the notice *and their mother's surgery*. However, once the landlord re-rented the rental unit, in this circumstance, the landlord was essentially prevented, by their own actions, from having their mother move into the rental unit.

In addition, it is also not clear from the submissions from the landlord how different it would be for the mother to remain in the main part of the house while she recovered and/or completed her rehabilitation as opposed to opening up the door between the main house and the rental unit with her living in the rental unit where they could provide the same assistance and support.

For these reasons, I am not satisfied that the landlord has provide evidence that would justify an exemption as contemplated by Section 51(3).

As a result, I find the tenant has established entitlement to the compensation claimed.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$13,800.00** comprised of the equivalent of 12 times the amount of rent under the tenancy agreement.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 22, 2022

---

Residential Tenancy Branch