



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

The former Tenants (hereinafter, the “Tenant”) filed an Application for Dispute Resolution on July 27, 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 July 31, 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 *Residential Tenancy Act* (the “Act”) on February 10, 2022. Both the Tenant and the Landlord attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. At the outset, each party confirmed they received the prepared evidence from the other; on this basis the hearing proceeded.

### Background and Evidence

Both parties provided a copy of the tenancy agreement signed on January 16, 2016. At the start of the tenancy the rent was \$2,800 per month, and by the end the rent amount was \$3,100. The basic terms of the tenancy agreement were not in dispute in this hearing. Previously the Tenant occupied the whole of the available rental unit, with no separation of upper or lower levels. There was no separate kitchen area in the lower level.

The Landlord issued the Two-Month Notice on April 30, 2021 for the final end-of-tenancy date of July 31, 2021. The Tenant did not challenge the validity of this via dispute resolution. They moved out from the rental unit on June 30, 2021. The rent was refunded for the month of July 2021 as the final month rent-free.

After this on July 22 the Tenant found an ad online showing the rental unit available to rent for \$2,900 per month. This was for the upper level of the house to rent. The ad itself showed the upper level available for August 1.

The same week they discovered the ad, the Tenant's friend called to the Landlord to inquire on the availability of the rental unit. They inquired on parking space, and the Landlord replied to that friend that they would be occupying the downstairs portion with their dog.

In their Application the Tenant submitted the Landlord's daughter was set to move into the rental unit. Ostensibly, this was the reason for the Two-Month Notice; however, it is the Landlord and not the daughter who would be living downstairs. They claim \$37,300 as the equivalent of 12 months of rent, for the reason of the Landlord not fulfilling the reason for ending the tenancy.

In response to this, the Landlord provided that they are still living there. They moved in with their daughter after the Tenant moved out. The daughter enrolled in academic studies in a different jurisdiction and moved out. The Landlord does not feel safe on their own; therefore, they found a roommate to live with them at that rental unit home. They have lived in the rental unit since July 1, 2021.

The Landlord clarified that there is no separate suite to rent, and they are sharing all of the rental unit living space with the roommates. The ad online was for roommates, and not a separate rental unit. Roommates moved in with the Landlord in the rental unit on August 23.

In their supporting evidence, the Landlord submitted an agreement with the roommates, signed on August 15. This shows the shared spaces: kitchen, laundry room and garage and garden. The roommates pay a monthly amount to the Landlord here. Each individual, including the Landlord, is referred to as "Roommate". The Landlord also submitted evidence of their daughter's resumed academic study, and utility bills showing the Landlord as the resident at the rental unit.

In the hearing, the Tenant reiterated their understanding that it was to be the Landlord's daughter only that was moving in. They found the ad showing availability only 3 weeks after they moved out from the rental unit. They stated in the hearing: "the Landlord is not allowed to rent out again, by separating out the lower/upper suite. . . it's wrong."

The Landlord stated their intention did not change from the time they ended the previous tenancy. They moved in with their daughter, and then other family members from out of country could also join in the big family house. If their intention was just to rent to new tenants,

they would have been able to do so right away, but they did not. They never want to rent separately to other tenants again; the reason now for having roommates is for their own safety with their daughter now moved away, and with no family members coming anytime soon.

### Analysis

Under s. 49 of the *Act* a landlord may end a tenancy if they or a close family member intends in good faith to occupy the rental unit. The Landlord here issued the Two-Month Notice on April 30, 2021 for this reason.

There is compensation awarded in certain circumstances where a Landlord issues a Two-Month Notice. This is covered in s. 51:

- (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 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 . . . 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.
- (3) The director may excuse the landlord . . . from paying . . . if, in the director's opinion, extenuating circumstances prevented the landlord . . . 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.

In this matter, the onus is on the Landlord to prove that they accomplished the purpose for ending the tenancy and that they used the rental unit for its stated purpose for at least 6 months.

On my review of the present matter, I find the Landlord accomplished the stated purpose for ending the tenancy. The evidence shows they used the rental unit for the reason indicated, for at least 6 months' duration. Specifically, that is their own use or that of a close family member.

I find the evidence shows the Landlord intended to acquire roommates. The Landlord remains in the rental unit and is sharing the kitchen and other common areas with those roommates. I find they did not have the intention to rent solely to other new tenants. The evidence shows the Landlord remains in the rental unit home to the present. For this reason, the purpose for ending the tenancy was accomplished right away; moreover, the Landlord has used the rental unit for that purpose for at least 6 months' duration.

The ad posted by the Landlord does not reveal that the Landlord intended to rent the unit to brand new tenants. I find it reasonable that the Landlord sought to acquire roommates in these circumstances. The ad was for new roommates to occupy one part of the house, not the entire available space. This is not the case where the Landlord was seeking completely new tenants to occupy the rental unit.

I find the evidence clearly shows the Landlord continued occupancy of the rental unit. With this reason, I find the Landlord has offset the burden of proof to show there was no violation of the *Act*. For this reason, there is no compensation to the Tenant under the *Act* s. 51.

Because the Tenant was not successful in their claim, I make no award for the Application filing fee.

### Conclusion

For the reasons outlined above, I dismiss the Tenant's claim for monetary compensation, without leave to reapply.

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: February 18, 2022

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Residential Tenancy Branch