



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking monetary compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property, and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The parties agreed that the evidence provided by the tenant has also been provided to the landlord. The parties agreed that a 2-page letter of explanation by the landlord, which was provided as evidence for this hearing was also provided to the tenant, but not the additional evidence provided by the landlord. Therefore, I decline to consider the additional evidence of the landlord that was not provided to the tenant. All other evidence has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for compensation related to the landlord's failure to use the rental unit for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property?

### Background and Evidence

TENANT'S EVIDENCE:

**The tenant** testified that this month-to-month tenancy began on September 15, 2018, and the tenant vacated the rental unit on September 5, 2021. Rent in the amount of \$2,150.00 was payable on the 1<sup>st</sup> day of each month, and there are no rental arrears. At the outset of the tenancy the tenant paid a security deposit in the amount of \$1,075.00 which has been fully returned to the tenant. The rental unit is a single family dwelling house.

The tenant further testified that on July 30, 2021 the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property by posting it to the door of the rental unit. A copy has been provided for this hearing and it is dated July 30, 2021 and contains an effective date of vacancy of September 30, 2021. The reason for issuing it states: 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); specifying the landlord or the landlord's spouse.

The tenant drives by the rental home a couple times per week and lights have always been off. The tenant also noticed a smashed window, which remained in that state for days later, so the tenant stopped by during the 1<sup>st</sup> or 2<sup>nd</sup> week of October, 2021 and noticed that no one had moved in. The tenant didn't believe that the landlord and spouse would be moving in considering the condition of the home and questioned that, but the landlord assured the tenant that the landlord would be moving in.

The house was demolished on March 28, 2022 and a copy of a demolition permit, and other permits have been provided by the tenant for this hearing. The demolition permit was applied for on July 16, 2021 and the permit was issued on March 21, 2022. Plans to re-build were submitted to the City by the landlord prior to issuing the Two Month Notice to End Tenancy for Landlord's Use of Property, in order for the landlord to obtain a building permit for a duplex on the property.

#### LANDLORD'S EVIDENCE:

**The landlord** testified that the landlord purchased the house from a developer, taking possession on June 29, 2021, and work for new construction was initiated by the developer. They submitted the permits prior to the landlord purchasing.

When applying for a demolition permit or construction permit, there are many steps before it goes to the City. The developer started the process in February, 2021. The landlord saw the property on July 18, 2021 and found that it was close to the landlord's workplace, and the landlord decided to do renovations, but the condition of the home

was pretty bad. The cost to complete the renovations was similar to constructing a new home so the landlord decided to demolish it, and still intends to move onto the property.

### Analysis

Where a party makes a monetary claim as against another party, the onus is on the claiming party to prove the claim.

The *Residential Tenancy Act* states:

**51** (2) 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 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, 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.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) 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, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this case, the effective date of vacancy stated in the notice was September 30, 2021. However, the *Act* also specifies that:

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;
- (b) [Repealed 2021-1-13.]
- (c) convert the residential property to strata lots under the [Strata Property Act](#);
- (d) convert the residential property into a not for profit housing cooperative under the [Cooperative Association Act](#);
- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- (f) convert the rental unit to a non-residential use.

In order to demolish, the landlord must give a notice to end the tenancy effective on a date that must be not earlier than 4 months after the date the tenant receives the notice, which must be in the approved form and cannot be given until all permits are in place.

In this case, the landlord testified that he took possession of the rental home on June 29, 2021. I have also read the explanation letter of the landlord which states that possession date was July 1, 2021, a difference of a few days.

I have also reviewed the permits which show that the application for a building permit was made on July 16, 2021 which was prior to issuing the notice to end the tenancy but well after the landlord took possession. I find that the landlord issued a Two Month Notice to circumvent the requirement of giving 4 months notice as required by law. I am not satisfied that extenuating circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy.

In the circumstances, I find that the Two Months Notice to End Tenancy for Landlord's Use of Property was not issued in good faith; the purpose for ending the tenancy was for the landlord to occupy the rental unit, and the landlord has failed to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice, and the tenant is entitled to compensation equivalent to 12 times the monthly rent of \$2,150.00, or \$25,800.00.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$25,900.00.

This order is final and binding and may be enforced.

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: May 05, 2022

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Residential Tenancy Branch