



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), issued on May 28, 2021.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. The interpreter affirmed that they would interpret the evidence at today's hearing from the English language to the Korean language and from the Korean language to English language according to the best of their ability.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

### Preliminary Issues

In this case, the tenant has named the landlord's property management company as the respondent, not the landlord. The landlord was properly named in the Notice. I find it reasonable to remove the landlord's property management company and replace it with the properly named landlord. I do not find this prejudicial to either party as the landlord attended and submitted evidence in response to the tenant's application.

### Issue to be Decided

Is the tenant entitled to compensation that is the equivalent of 12 times the monthly rent?

### Background and Evidence

The tenancy began on July 28, 2020 and was a fixed term expiring on July 31, 2021. Rent in the amount of \$4,500.00 was payable on the first of each month. A security deposit of \$2,250.00 was paid by the tenant. The tenancy ended on July 31, 2021.

The tenant testified that they moved out of the rental unit on July 31, 2021, after receiving the Two Month Notice, pursuant to section 49(3) of the Act. The Tenant provided a copy of the Two Month Notice in evidence.

The reason for ending the tenancy within the Two Month Notice is:

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 landlord or the landlord's spouse was indicated to be the family member who will occupy the unit.

The tenant testified that the landlord did not occupy the rental unit as it was sold on July 15, 2021, before they even vacated. Filed in evidence is a copy of the property listing which shows the property was sold on July 15, 2021.

The landlord testified that in April 2021 they had listed the property for sale; however, by the end of May 2021 they had no activity. The landlord stated that they spoke to the real estate agent, and they were informed that the reasons was that the property was not selling was because it was messy, dirty and the yard was overgrown with weeds.

The landlord testified that they decided to have the tenant move-out as they had intended to move into the rental unit and clean up the premises and then put it back on the market for sale as they were having financial difficulties.

The landlord testified that when they issued the Two Month Notice their intent was that if the property was not sold by August 31, 2021, they would move into the premises; however, it was sold, and the new owners are living in the premises. The landlord stated that the tenant knew they were planning to sell the property as they had allowed showings and they do not understand what they did that breached the Act.

The landlord's agent testified that to clarify this matter that the landlord had intended to move into the rental unit at the end of August 2021, the date in the Two Month Notice; however, the tenant ended the tenancy early effective July 31, 2021. The agent stated

that the property was sold on July 15, 2021, with a possession date of October 31, 2021, and the new owners have been living in the premises.

### Analysis

Section 51 (2) of the Act provides:

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.**

[my emphasis]

(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 the case may be, from

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

(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.

Policy Guideline #50 Compensation for Ending a Tenancy addresses the requirements for a landlord to pay compensation to a tenant when a landlord ends a tenancy for landlord's use of property. The Guideline provides that a landlord cannot end a tenancy to occupy the rental unit, and then substitute another purpose.

The Guideline provides circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.

- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal but didn't notify the landlord of any further change of address or contact information after they moved out.

The Guideline provides that the following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations.

Based on all of the above, the evidence and testimony from the tenant and landlord, and on a balance of probabilities, I find as follows:

In this case, the Two Month Notice issued by the landlord states they would be occupying the rental unit after the effective date in the Two Month Notice. However, clearly the Two Month Notice was not issued in good faith as the landlord continued to try to sell the rental unit even after the Two Month Notice was issued.

Regardless, if the tenant knew the landlord was still trying to sell the premise that does not impact the Two Month Notice or the reason stated within the Two Month Notice it only supports that the landlord did not issue the Two Month Notice in good faith.

The landlord was obligated under the Act to occupy the premises for at least six months after the effective date of the Notice. I find the landlord ended the tenancy improperly and failed to use the rental unit for the reason stated within the Two Month Notice for a six-month duration. The Act does not allow a landlord to issue a Two Month Notice and then substitute another reason in the Notice, such in the case the property was sold on July 15, 2021. I find the landlord must pay the tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I have considered section 51(3) of the Act and the Policy Guideline regarding compensation and extenuating circumstances. I find the landlord has not provided any extenuating circumstance that was unforeseeable.

While I accept the landlord may have had financial issues and the sale of the premises may have been necessary; however, this was known to the landlord at the time they issued the Two Month Notice. The landlord could have waited for the property to sell and then issued a notice to end tenancy under the provisions of section 49(5) of the Act.

I find that the landlord owes the tenant \$54,000.00 which is the equivalent of 12 times the \$4,500.00 monthly rent payable under the tenancy agreement.

I grant the tenant a monetary order in the amount of **\$54,000.00**. This monetary order may be filed in a court of competent jurisdiction and enforced as an order of that court. The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

### Conclusion

The tenant's application for compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property is granted. The tenant is granted a monetary order in the above noted amount.

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: June 10, 2022

---

Residential Tenancy Branch