



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC FF

### Introduction

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

- a monetary order for compensation related to a Notice to End Tenancy for Landlord's Use of Property pursuant to section 51;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the tenant's application and respective evidence submissions on file.

At the outset of the hearing, the tenant agreed to withdraw her claim for monetary compensation for moving related costs.

### Issues

Is the tenant entitled to a monetary order for compensation relating to a Notice to End Tenancy for Landlord's Use of Property?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background & Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, only the relevant details of their respective submissions and arguments are reproduced here.

On August 18, 2021, the previous landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), pursuant to section 49 of the Act, with an effective date of October 31, 2021. The notice was issued on the grounds that the landlord entered into an agreement in good faith to sell the unit; all the conditions of the sale have been satisfied; and, the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit.

The tenant vacated the rental unit on October 31, 2021, as per the Notice.

The tenant is claiming an amount equivalent of twelve times the monthly rent as compensation for the landlord not using the rental property for his own use after issuing the Two Month Notice. The monthly rent was \$950.00.

In support of her claim the tenant submits that the purchaser never occupied the rental unit. The tenant submitted a copy of a Facebook add dated November 18, 2021, which advertised the rental unit for immediate occupancy. The tenant submits the purchaser ("landlords"), never moved their parents into the suite as intended and instead renovated and re-rented the unit within 2 weeks of the tenant vacating.

The landlord testified that they purchased a bigger home after recently having a new baby. The landlord testified they asked for vacant possession as the intent was for their parents to move-in and help with the baby. The landlord's parents currently reside in India. After obtaining possession of the property, they made some changes to the rental unit adding a wall in the living room so they could have additional space for themselves for a media room and a bar. The rental unit was decreased in size by 159 sqft. The landlord testified that due to the ongoing Covid-19 pandemic and his father being a diabetic, his fathers Doctor advised against travelling. The doctor's visit was on November 2, 2021, two days after the tenants vacated. A copy of the doctor's note was submitted as evidence. The landlord submits that the situation left them in financial pinch, so they made the decision to re-rent the unit. The unit was re-rented as of November 15, 2021.

In response to questions from the tenant's representative, the landlord testified that no tickets had been purchased and the parents have not come as of the date of the hearing. The landlord testified his parents have a super visa which allows them to stay for up to 4-5 years and he still intends to bring them over when his father is in better health.

### Analysis

Section 51 (2) of the Act provides that if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

Pursuant to section 51(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 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.

There was no dispute that the landlord did not accomplish the stated purpose for ending the tenancy after the effective date of the Two Month Notice and that the unit was re-rented shortly after. The landlord argued that he converted a portion of the unit for his own use; however, the Act requires the rental unit be occupied for the landlord's own use for at least 6 months. Section 49 of the Act states a tenancy may be ended if the landlord or purchaser intend to occupy "the rental unit". It does not state the tenancy can be ended if the intention is to only occupy a "portion" of the unit. Therefore, the landlord is not permitted to reconfigure the space and only occupy a portion while re-renting the remaining space.

I find the argument put forward by the landlord as to why he was not able to accomplish the stated purpose for ending the tenancy is not an extenuating circumstance. It was the landlord's choice to serve the Two Month Notice and require the tenant to vacate

before his parents move from India was even confirmed. Rather the landlord issued the Notice before any trip tickets were purchased and before the parents were medically cleared to travel. I find it curious that the landlord's parents allegedly requested a medical opinion on whether it was safe for them to travel two days after the tenant vacated.

I allow the tenant's claim and award an amount of \$11,400.00, which is twelve times the monthly rent of \$950.00.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$11,500.00.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$11,500.00. 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: June 30, 2022

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Residential Tenancy Branch