



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNECT

### **Introduction**

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

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application') In accordance with section 89 of the *Act*, I find that the landlord duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed with the hearing.

### **Issues(s) to be Decided**

Is the tenant entitled to a monetary award for the purchaser's failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on July 1, 2020 with monthly rent set at \$1,100.00, payable on the first of every month. The tenant was returned his security deposit of \$600.00 at the end of the tenancy.

It was undisputed by both parties that this tenancy had ended on or about August 31, 2021, after the tenant was served with a 2 Month Notice by the landlord on July 31, 2021 in order for the landlord to move in.

The tenant is seeking compensation in the amount of \$13,200.00, which is the maximum amount he may apply for under the *Act* for the landlord's failure to comply with section 49 of the *Act*. The tenant feels that the landlord failed to occupy the home as required by the *Act*.

The landlord testified in the hearing that they did move in after the tenancy had ended in August 2021, but the landlord had moved out in the beginning of December 2021 after the landlord had reconciled with their partner. The landlord testified that the unit remained vacant until it was re-rented in April 2022.

## **Analysis**

Section 51(2) of the *Act* reads in part as follows:

*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*

*(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.*

*(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.*

RTB Policy Guideline 2A further clarifies the meaning of “vacant possession”, and what it means to occupy a rental unit or home:

### ***Vacant possession***

*Other definitions of “occupy” such as “to hold and keep for use” (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (see **Section E**). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.*

I have considered the testimony and evidence of both parties, and I find that although the landlord did move in, the landlord moved out after approximately four months. Although the unit was not re-rented within the following two months, the unit was left vacant by the landlord. As noted above, by leaving the unit vacant, the landlord failed to satisfy the 6 month requirement to occupy the rental unit. By moving out in December 2021, and leaving the space vacant, the landlord failed to comply with section 49(3) of the Act.

Policy Guideline #50 states the following about “Extenuating Circumstances” in the context of compensation for ending a tenancy under section 49 of the Act.

*An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are 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 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*

I find that the reasons provided by the landlord for moving out and leaving the unit vacant are not sufficient to support that there were extenuating circumstances that prevented the landlord from using the rental unit for the stated purpose. I find that the landlord's explanation does not fall under the definition of extenuating circumstance as set out in the *Act* and *Policy Guidelines*. Accordingly, I find that the tenant is entitled to compensation equivalent to 12 times the monthly rent as required by section 51(2) of the *Act* for the landlord's noncompliance. I issue a monetary award to the tenant in the amount of \$13,200.00.

I note that although the tenant's application did include an additional \$100.00, the tenant did not clearly stipulate in their application that they were applying for reimbursement of the \$100.00 filing fee. No amendments were received in accordance with RTB Rule 4.6 to add any additional claims. These rules ensure that a respondent is aware of the scope of the hearing and are prepared to respond, if they chose to do so.

Given the importance, as a matter of natural justice and fairness, that the respondent must know the case against them, I cannot consider any additional claims other the compensation awarded above, including recovery of the filing fee for this application. I decline to make any further findings.

### **Conclusion**

I issue a \$13,200.00 Monetary Order in favour of the tenant in compensation for the landlord's failure to comply with section 49(3) of the *Act*.

The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: July 04, 2022

---

Residential Tenancy Branch