



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

Applicant SS (the applicant) and respondents KS and MI attended the hearing. The respondents were assisted by BI. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

The applicant submitted a Canada Post registered mail tracking document indicating the materials were delivered on December 31, 2021. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

### Preliminary Issue – Respondent MI

MI affirmed he is a real estate agent, and he represented the rental unit's purchaser.

Based on MI's undisputed testimony, I find that MI is not related to the tenancy.

I exercise my authority under Section 64(3)(c) of the Act to amend the application to exclude MI as a respondent to this application.

### Issues to be Decided

Is the applicant entitled to:

1. a monetary order for an amount equivalent to twelve times the monthly rent?
2. an authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the applicant's claims and my findings are set out below. I explained rule 7.4 to the attending parties: "Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered."

The applicant affirmed the tenancy started on January 01, 2020 and ended on September 27, 2021. Monthly rent was \$1,600.00, due on the first day of the month. The landlord collected and returned a security deposit of \$800.00. The tenancy agreement was submitted into evidence. The respondents do not know the tenancy details.

The applicant received a two month notice to end tenancy for landlord's use (the Notice) on August 31, 2021. The applicant stated the Notice was signed. Later the applicant testified that the Notice was not signed.

MI said that he provided the Notice signed to the seller's real estate agent and the seller's real estate agent served it to the applicant.

A copy of the 2 month Notice was submitted into evidence. The 2 month Notice is dated March 31, 2021 and the effective date is October 31, 2021. It states: "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit." The Notice indicates the purchaser is KS. The Notice submitted into evidence is not signed.

The applicant believes that KS and MI were the purchasers.

The applicant moved out before the Notice's effective date because he found a new rental unit.

The applicant submitted a document entitled "Buyer's notice to seller for vacant possession" (the buyer's notice) signed by purchaser KS and witness MI and a letter dated August 30, 2021: "Here's a notice that my family and I are going to move into the house and it's for owner occupancy use. Thank you. Signed: KS".

BI affirmed the rental unit was a 2 bedroom basement suite. BI purchased the rental building, which consists of the main floor and the basement rental unit.

KS stated that she made an offer to purchase the rental building for her daughter BI. MI testified that BI was able to secure financing to purchase the rental building after KS made the offer and BI purchased the rental unit.

BI said the completion was on November 16, 2021. BI moved to the rental building on November 17, 2021 and has been occupying the rental building until today. The applicant does not know if the purchasers moved to the rental unit. Later the applicant affirmed the purchasers probably are occupying the rental unit.

The applicant found an advertisement for one bedroom in the rental unit in early December 2021. The asking price was \$1,600.00.

BI stated that her oldest son is attending university and that he would like to live in a student's residence in the fall of 2022. BI posted the advertisement to rent one bedroom in the rental unit and kept the advertisement for less than one week to know how much she could rent one bedroom if her son moves in the fall. BI removed the advertisement after KS and MI received the materials.

The applicant testified that the respondents could have easily seen other advertisements for similar units in the neighbourhood and the respondents tried to re-rent one bedroom asking for the same amount of money that the applicant paid for the entire rental unit.

BI offered the applicant to move back to the rental unit and occupy only one bedroom. The applicant said the real estate agent casually informed him that he could move back to the rental unit.

BI did not know that the real estate agent served the Notice and thought that the applicant moved out voluntarily. MI affirmed that BI did not know that the applicant received the Notice because the negotiation for the sale of the rental unit was very quick.

The applicant submitted an email dated January 18, 2022:

[applicant] Is the suite still available by chance?

[respondent] Sorry, it's off the market

The applicant stated the purchasers acted in bad faith and did not intend to occupy the rental unit. The applicant believes the purchasers moved in after they received the materials.

BI testified that she did not act in bad faith.

### Analysis

Section 49(5) of the Act states:

- (5)A landlord may end a tenancy in respect of a rental unit if:
- (a) the landlord enters into an agreement in good faith to sell the rental unit,
  - (b) all the conditions on which the sale depends have been satisfied, and
  - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
    - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

Section 49(1) of the Act states that close family member means, in relation to the landlord, the landlord's parent, spouse or child.

I accept the uncontested testimony that BI is the daughter of KS.

Based on the convincing undisputed testimony offered by MI, KS and BI, I find that KS made an offer to buy the rental unit and BI purchased it.

The Act defined landlord as:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act,** the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;**

(emphasis added)

KS sent a letter to the applicant on August 30, 2022 informing him that she will move to the rental unit with her family. KS signed the buyer's notice as the buyer of the rental unit.

I find that KS acted as the landlord, as she signed the buyer's notice, sent the August 30, 2022 letter to the applicant and the Notice indicates that KS is the purchaser.

Based on the applicant's convincing testimony, I find that the applicant received the Notice on August 31, 2021.

The applicant's testimony regarding the Notice's signature was not convincing. Based on MI's convincing testimony, I find the Notice was signed.

Section 51(2) of the Act provides that the purchaser, in addition to the amount payable under subsection (1), must pay an amount that is 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.

I find that BI must have occupied the rental unit from November 01, 2021 to April 30, 2022, as the Notice's effective date was October 31, 2021.

Residential Tenancy Branch Policy Guideline 2A states:

6-month occupancy requirement

The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).

[...]

**E. CONSEQUENCES FOR NOT USING THE PROPERTY FOR THE STATED PURPOSE**

If a tenant can show that a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:

- taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice

the tenant may seek an order that the landlord pay the tenant additional compensation equal to 12 times the monthly rent payable under the tenancy agreement.

The parties offered conflicting testimony regarding the occupancy of the rental unit after the tenancy ended. Per section 51(2) of the Act, the purchasers have the onus to prove that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the Notice and that the rental unit was occupied for at least 6 months by BI.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed: "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed."

I find the testimony offered by BI was, overall, credible, straightforward and convincing. The applicant does not know if the purchasers moved to the rental unit and later affirmed the purchasers probably are occupying the rental unit. Based on BI's convincing testimony, I find that BI moved to the rental unit on November 17, 2021 and has been occupying the rental unit until today.

I find that BI sufficiently explained why she listed one bedroom of the rental unit.

Based on BI's testimony, I find that BI offered the applicant to re-rent one bedroom of the rental unit.

It is not relevant in this claim if the respondents served the notice in good faith. The applicant could have disputed the Notice and raised the good faith issue. The relevant issue is if the respondents occupied the rental unit, as stated in the Notice.

Considering all the above, I find the respondent proved, on a balance of probabilities, that KS's daughter BI has been occupying the rental unit since November 17, 2021.

Thus, the applicant is not entitled to a monetary order under section 51(2) of the Act.

As the applicant was unsuccessful, the applicant must bear the cost of the filing fee.

### Conclusion

I dismiss this application without leave to reapply.

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 26, 2022

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Residential Tenancy Branch