



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement started on October 1, 2016. The tenancy continued with a further written agreement starting January 1, 2019 to December 31, 2019. Rent of \$2,100.00 was payable on the first day of the month. The Landlord gave the Tenant a two month notice to end tenancy for landlord’s use dated January 30, 2021 (the “Notice”). The effective date on the Notice set out the wrong year in error and was understood and accepted to be April 30, 2021. The reason stated on the Notice is that the father or mother of the landlord or the landlord’s spouse will occupy the unit. The Tenant moved out of the unit on April

28, 2021. The parents never occupied the unit that remained unoccupied until February 2022.

The Landlord states as follows:

The Parties understood from the onset of the tenancy that rezoning would occur within three to five years. The Landlord's written submissions set out that the Landlord had made it clear to the Tenants that the home would be demolished, and the property sold to a developer.

The unit was not occupied because the building and site were in too great a state of disrepair for occupancy by the parents and the Landlord would have to spend "thousands" to make it appropriate to the needs of the parents. The Landlord did not provide an estimate of the repair costs. Prior to serving the Notice the Landlord had deep concerns about the unit from their visuals of the state of the outside. It is unknown when the Landlord saw the interior of the unit.

At the time of the Notice the Landlord was aware that some repairs would be needed. The stairs in the unit were not fully safe, although they had been repaired by the Landlord during the tenancy. The Landlord addressed "loose things". The parents could not occupy the unit as the Landlord was most concerned with the presence of mould and the state of the stairs having a greater affect on the parents due to their age.

The unit is now occupied by a sibling and part-owner. The building will be demolished shortly, probably in the next year. The Tenant was not given a notice for demolition of the unit as the Landlord thought that the parents would move in and occupy the unit for the period leading up to the demolition. The Landlord thought the demolition would have occurred by now. The parents were prepared to move into the unit to support the family investment.

The Tenant states as follows:

The unit was in disrepair from the onset of the tenancy and was left, along with the back yard, in better shape at move-out. The Landlord was inside the unit in the fall of 2020 to deal with a septic issue and photos of the unit had been sent to the Landlord throughout the tenancy. The unit had rodents. Black mould was present from the onset of the tenancy and was remaining at the end of the tenancy. After informing the Landlord about the stairs and deck the Landlord only did a “bandage” repair and left loose stairs. The Landlord was “kept in the loop” about every problem.

### Analysis

Section 51(2) of the Act provides that 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.

Section 51(3) of the Act provides that 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.

Policy Guideline #50 sets out that extenuating circumstances are “circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner’s control.” The guideline further sets out that a change of mind is not an extenuating circumstance.

It is undisputed that the unit was not used for the stated purpose on the Notice.

The Landlord gave vague evidence on its knowledge of the state of the unit at the time the Notice was given and provided no supported evidence of the state of the unit at the time the Notice was served and upon the end of the tenancy. The Tenant gave undisputed evidence that the Landlord was inside the unit in the fall of 2020. For this reason, I overall prefer the Tenant’s evidence of continuous reporting to the Landlord of repair issues and find on a balance of probabilities that at the time of the Notice the Landlord was fully aware of the state of the unit and of repairs that would be required for the parents’ occupation of the unit. I also find on a balance of probabilities that the state of the unit had not changed between the provision of the Notice and the effective date of the Notice. I find therefore that the need for repairs is not an extenuating circumstance that could not have been anticipated and that prevented the occupation of the unit by the parents.

There is no supporting evidence of prohibitive costs to make the repairs to the unit and given the Landlord’s evidence of a future demolition I find it more likely that the Landlord did not make any repairs to enable the parent’s occupation based on simple financial consideration. This is not an extenuating circumstance. The tenancy did not end due to the demolition of the unit although this reason is available to the Landlord under the Act as a reason to end the tenancy. Given the Landlord’s evidence I consider that demolition of the unit was the ultimate reason for ending the tenancy. Given the Landlord’s evidence that the unit was to be occupied pending the demolition of the unit, I find on a balance of probabilities that the Landlord only changed their mind about the

occupation of the unit by the parents pending the demolition. This is not an extenuating circumstance.

For the above reasons I find on a balance of probabilities that the Landlord has not substantiated extenuating circumstances arose that prevented the occupation of the unit as stated on the Notice. The Tenant is therefore entitled to compensation equivalent to 12 month's rent in the total amount of **\$25,200.00**. As the Tenant has been successful with their claim, I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$25,300.00**.

#### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$25,300.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: August 17, 2022

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Residential Tenancy Branch