



# Dispute Resolution Services

Page: 1

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.

Tenant JP (the tenant) and landlord MP attended the hearing. The landlord was assisted by advocate AS (the landlord). 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."

As both parties were present service was confirmed. 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.

### Issues to be Decided

Is the tenant 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 and witnesses, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant'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."

Both parties agreed the tenancy started on June 01, 2020 and ended on January 31, 2022. Monthly rent when the tenancy ended was \$1,325.00, due on the first day of the month. The landlord collected and returned a security deposit of \$587.00. The tenancy agreement was submitted into evidence.

Both parties also agreed the landlord served and the tenant received a two month notice to end tenancy for landlord's use (the Notice) on January 04, 2022. Both parties agreed the effective date of the Notice was April 01, 2022. The landlord served the Notice to occupy the rental unit with his wife and his two children.

The tenant claims compensation in an amount equivalent to twelve times the monthly rent, as the landlord did not move to the rental unit.

Both parties agreed the landlord purchased the rental unit in 2020, after the tenancy began. The landlord moved to the upper unit in 2020 and later his wife and the two children moved to the upper unit. The rental unit is the lower unit.

Both parties agreed the 1,079 square feet upper unit has two bedrooms and one office and the 942 square foot lower unit has one bedroom and one office.

The landlord affirmed the parties had a good relationship until October 2021. The tenant stated the relationship started deteriorating before October 2021 because of water and rodent issues in the lower unit.

The landlord operates a business from the upper unit. The landlord has pieces of equipment to teach yoga virtually and needs a larger office space. The landlord informed the tenant in October 2021 that he planned to occupy the lower unit as his

living space and the upper unit as his office, as the upper unit was more suitable for the online classes.

The landlord submitted a document indicating that his company was registered at the rental unit's address on October 19, 2021.

The landlord submitted one photograph showing his office in the upper unit with a computer, a camera and a microphone.

The landlord testified he needs to expand his office, as his children complain that they hear noise when the landlord is teaching. The tenant said he could also hear some noise when the landlord is teaching.

The landlord travelled with his family overseas on November 25, 2021. The landlord submitted airfares indicating he returned to Canada on April 12, 2022. The landlord lists the upper unit on Airbnb when he is overseas.

Both parties agreed the lower unit's water supply was disrupted in late December 2021 because of extreme cold weather. The landlord affirmed the water supply was reconnected before April 12, 2022, but the water had a bad smell.

The tenant served a ten day notice to end tenancy on January 19, 2022 and moved out earlier.

The landlord decided to list the lower unit on Airbnb for short term rentals, as the landlord's family would not return to Canada until April and the tenant moved out early on January 31, 2022.

The landlord contracted a property manager to list the lower unit on Airbnb. The landlord submitted an invoice: "finish setting up furniture: delivery of 3 cabinets for living room, dining table and chairs, take photos and air bnb listing creation. Balance: \$376.46. Due on March 16, 2022."

The landlord stated the lower unit was listed on Airbnb around March 16, 2022 and the lower unit was rented twice for a few days in March 2022. The landlord testified the Airbnb guests complained about the water quality and the landlord did not list the lower unit anymore.

The tenant submitted an Airbnb listing dated April 08, 2022. The tenant said the lower unit is currently available on Airbnb and there are five reviews of guests in July and one in June 2022. The tenant affirmed that both the upper and lower units are listed as a single unit on Airbnb. Later the tenant and the landlord agreed the current Airbnb listing is for the upper unit only.

The landlord stated he has been occupying the lower unit with his wife and two children since April 12, 2022. Towards the end of the hearing, the tenant testified that when the landlord is not travelling, he occupies the upper and lower units.

The landlord submitted a letter signed by a contractor hired by the landlord to paint the upper unit. The July 23, 2022 letter states:

I was contracted by the [landlords] on April 27, 2022. They asked me to give them an estimate for painting the upstairs unit [...]. It was clear that they were living in the downstairs unit. I worked at the house for most of May.

The landlord submitted an email dated July 24, 2022:

I am happy for you to provide me as a contact to confirm that you live in the downstairs unit [...] I have definitely seen [landlords] living there during these months since April when I have been visiting and working on electrical stuff for the property. I did meet a lady who lived upstairs at the start but no one else except you guys and your kids, sometimes other people upstairs who are visiting you. I am excited for your new yoga space in the workshop.

The landlord submitted a letter signed by the property manager that listed the lower unit on Airbnb. The July 25, 2022 letter states:

They wanted to see if parts of the property could be used for AirBnb before they returned from overseas as their previous tenant had moved out earlier than they had expected and they had experienced costs from extended water issues. I was happy to consider it and created a listing in my name but didn't expect there would be much time before they returned.

We agreed to connect in person after they returned and I continued to schedule required trade works for them for all parts of their home in preparation for 12th April. I also arranged for the clean up of their upstairs unit after they returned and were living downstairs. This clean up was in late April after their upstairs tenant vacated on 18th April. The property was not ready for any kind of long term tenancing without water issues being resolved which only occurred around 24th May.

I can confirm that there are no tenants at this property, or any other people occupying their basement unit except them and their children. I believe they live and work in this property and are legitimately on the premises, and can easily be found there.

The landlord submitted a photograph dated May 29, 2022 showing the landlord using the upper unit as his office and another photograph dated June 07, 2022 showing the landlord's children in the lower unit. The landlord submitted three undated photographs showing his children in the lower unit.

### Analysis

Per section 51(2) of the Act, the onus of proof is on the landlord.

Sections 49(2) and (3) of the Act state:

(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 2 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

[...]

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51(2) of the Act provides that the landlord, 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.

RTB Policy Guideline 50 states:

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished 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 (except for demolition).

I accept both parties uncontested testimony that the Notice's effective date was April 01, 2022.

Per section 51(2) of the Act, the landlord must occupy the rental unit from April 02 to October 02, 2022. From the end of the tenancy on January 31 to April 01, 2022, the landlord could have used the rental unit without restrictions, as the tenant moved out before the notice's effective date.

RTB 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.

I accept the uncontested testimony that the rental unit is the lower unit. The landlord may use the upper unit without restrictions.

The landlord's testimony was credible and convincing. The landlord submitted airfares indicating he arrived in Canada on April 12, 2022. The landlord sufficiently explained why he listed the lower unit on Airbnb in March 2022. The July 23 and 25 letters and the

July 24, 2022 email indicate the landlord has been occupying the lower unit. The June 07, 2022 photograph shows the landlord's children in the lower unit.

The tenant agreed that when the landlord is not travelling, he occupies both the upper and lower units.

Considering all the above, I find the landlord proved, on a balance of probabilities, that he has been occupying the rental unit since April 12, 2022.

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

As the tenant was not successful, the tenant 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: August 09, 2022

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Residential Tenancy Branch