



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on August 8, 2022. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51

Both parties attended the hearing and provided affirmed testimony. The landlord did not provide any documentary evidence. The Tenant stated she sent her Notice of Dispute Resolution Proceeding and evidence to the Landlord by registered mail. The Landlord acknowledged getting this package. No service issues were raised. I find the Tenant sufficiently served the Landlord.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under section 51 of the Act?

### Background and Evidence

The Tenant stated that monthly rent was \$956.31. The Tenant stated she received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) in May 2021, and moved out on or around July 31, 2021. The Tenant provided a copy of the Notice into evidence, and it indicates the following ground as a reason to end the tenancy:

- 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.

Under the "purchaser information" section of the Notice, the purchase was listed as the Landlord named on this application.

The Tenant stated that after she moved out, the new owner of the property rented it to some of his family friends, and they are not a close family member to the Landlord named on this application.

The Landlord stated that he initially planned to buy the property, and his offer had been accepted by the seller. The Landlord stated that the same day he lifted conditions on the sale contract, the seller issued the Notice, as he had requested. Then, the Landlord stated that before the sale completed, he assigned the purchase and sale agreement contract to a different corporate entity. The Landlord stated he was not at liberty to reveal the name of the company who ultimately ended up buying the house. However, he asserts it is not his company, and he does not own or operate the company.

The Landlord asserts he was never actually the Landlord because he never bought the house, and instead he assigned the sale to another company. The Landlord provided no documentary evidence to support any of these transactions or assertions.

### Analysis

First, I turn to the issue regarding whether or not the Landlord named on this application is a Landlord for the purposes of this proceeding and whether he has been appropriately named as the Respondent to this application.

I note the Act defines a Landlord as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (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;*
- (d) a former landlord, when the context requires this;*

Also, section 51(2) of the Act states the following regarding purchasers of rental units subject to 2 Month Notices issued under section 49 of the Act:

***Tenant's compensation: section 49 notice***

***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.*

In this case, I find section 51(2) of the Act clearly and deliberately includes purchasers, as being liable for following through with the reason behind the Notice. In this case, I find the respondent is appropriately named on this application, as he identified himself as the purchaser on the second page of the Notice and he asked for the Notice to be issued so that he could move in. The Tenant had to vacate the rental unit in accordance with this Notice, and I find the Landlord, as named on the Notice is appropriately named as a respondent regardless of whether or not he may have subsequently assigned the sale agreement to another company. Further, the Landlord provided no documentary evidence supporting that the sale agreement was actually assigned and that anyone else ought to be liable for fulfilling the obligations under section 51 of the Act, relating to the Notice issued. The Landlord may wish to pursue the assignee through a court of

competent jurisdiction, should he wish to recover costs he feels he shouldn't be liable for.

For the purposes of this application, the onus is on the Landlord to prove that he accomplished the stated purpose on the Notice, which is that he or his close family would be moving into the property.

I have reviewed the testimony and evidence on this matter. I note the onus is on the Landlord to demonstrate that he accomplished the stated purpose on the Notice and did so for at least 6 months, after the effective date of the Notice, unless he has an extenuating circumstance. There is no evidence that either the Landlord or his close family member moved in, and in fact, it appears it was just a friend of the Landlord's, although this is unclear.

As a result, I find it more likely than not that the Landlord breached section 51(2) of the Act and failed to move in for at least 6 months, which typically entitles the Tenant to compensation. However, the issue now becomes whether or not the Landlord has sufficiently demonstrated that there were extenuating circumstances such that he should be excused from accomplishing the stated purpose on the Notice and from paying the Tenant compensation.

***Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy states as follows:***

*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*

The Landlord did not speak to any extenuating circumstances specifically. He only stated that he chose to assign the contract of purchase and sale to a different purchaser. However, I find there is insufficient evidence to support the sale was assigned, as the Landlord provided no documentary evidence. I am not satisfied the Landlord has sufficiently demonstrated that there were any “extenuating circumstances”, such that it would be unreasonable or unjust for him to pay the compensation.

I award the Tenant \$11,475.72, pursuant to section 51(2) of the Act, which is 12 times rent of \$956.31. I also award the \$100.00 filing fee.

### Conclusion

I grant the Tenant a monetary order in the amount of \$11,575.72. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: August 9, 2022

---

Residential Tenancy Branch