



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Bestwick Apartments Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

The Tenant filed an Application for Dispute Resolution on January 20, 2022 seeking compensation from the Landlord. This is related to the Landlord's issuance of a Notice to End Tenancy for the Landlord's Use of Property (the "Two-Month Notice") served to the Tenant on April 29, 2021. Additionally, they applied for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Act* on September 1, 2022. In the conference call hearing, I explained the process and provided the attending party the opportunity to ask questions.

The Tenant attended the hearing, and they were provided the opportunity to present oral testimony and make submissions during the hearing. The Landlord did not attend the telephone conference call hearing.

### Preliminary Matters

To proceed with this hearing, I must be satisfied that the Tenant made reasonable attempts to serve the Purchaser with the Notice of Dispute Resolution Proceeding (the "Notice") for this hearing. This means the Tenant must provide proof that they served the document at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

The Tenant set out how they served this Notice to the Landlord via registered mail on February 4, 2022. This is two days after the Residential Tenancy Branch issued the Notice to the Tenant on February 2, 2022. This is the time limit set in the *Residential Tenancy Branch Rules of Procedure*. The Tenant provided they sent this Notice to the Landlord's address for service

as provided on the One-Month Notice by the Landlord. The Tenant stated that the package they sent included all the evidence they intended to rely on for this hearing.

Based on these submissions, and proof in the form of tracking information, I accept the Tenant served the Landlord with Notice of this hearing and their evidence in a manner complying with s. 89(1)(c) of the *Act*. The hearing thus proceeded in the Landlord's absence.

### Issues to be Decided

Is the Tenant entitled to monetary compensation for the Two-Month Notice from the Landlord, pursuant to s. 51 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

### Background and Evidence

Though the Tenant did not provide a copy of the tenancy agreement they had with their former Landlord, they spoke to the relevant details in the hearing. The agreement started in March 2002, and the Tenant described their amicable relationship with the then-Landlord who sold this rental unit property to the Landlord here who ended the tenancy.

The rent amount in place up until the end of the tenancy was \$800 per month. This amount forms the basis for their claim for compensation.

The Tenant moved out toward the end of May, 2021. They secured a new living arrangement by May 1<sup>st</sup>, and the final month of May 2021 in the rental unit that is the subject of this hearing was rent-free.

The Tenant provided a copy of the Two-Month Notice issued by the Landlord on April 29, 2021. This gave the move-out date of June 30, 2021. On page 2, the indication is that the rental unit would be occupied by the Landlord or the Landlord's own family member, particularly their child or spouse. The Landlord's name and address for service was complete on page 1 of that document.

After the Tenant's move out from the rental unit, they would periodically attend back at the rental unit to check if any of their mail arrived at that place. They observed no one living in the

rental unit during that time. In July 2021 they observed doors off, windows taped/plastic, and then a construction fence around the perimeter of the property. They took a photo through the front window, revealing an entirely empty interior. Much later, a trailer arrived at the property, and according to the Tenant's former neighbour that trailer ran a generator and then required power via extension cord from other surrounding homes.

On their Application, the Tenant provided the total amount of their claim as \$9,600. This is based on 12 months of rent at \$800 per month.

### Analysis

Under s. 49(3) of the *Act* a landlord may end a tenancy if a landlord or a close family member of a landlord intends in good faith to occupy the rental unit.

A tenant's compensation in these circumstances is governed by s. 51 which provides:

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant . . . 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 . . . 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.

I find the Landlord, as set out in s. 51, is the party who ended this tenancy, named as such on the Two-Month Notice. The Tenant provided sufficient evidence to establish that the Landlord did not accomplish the stated purpose for ending the tenancy. That is, the Landlord's family member did not occupy the unit as stated in the Two-Month Notice. I find the Tenant's evidence shows no one occupied the rental unit within a reasonable period after they moved out from the rental unit on May 1, 2021.

I find this is clear evidence that the Landlord did not use the unit for their own use as they so specified in the Two-Month Notice. There is no evidence the Landlord took steps toward occupancy within a reasonable period of time. The photos provided by the Tenant show an empty, unused rental unit. The Landlord did not accomplish the stated reason for ending the tenancy. This is a breach of the *Act* governing the reason for the Landlord ending the tenancy.

For these reasons, I find the Tenant has presented sufficient evidence to show they are entitled to compensation for a breach of the *Act* by the Landlord. I grant the Tenant compensation in the amount specified by s. 51(2), the equivalent of twelve times the amount of the monthly rent of \$800. This is \$9,600.

The *Act* s. 72 grants me the authority to order the repayment of a fee for the Application. As the Tenant was successful in their claim, I find they are entitled to recover the \$100 filing fee from the Purchaser.

### Conclusion

Pursuant to s. 51 and s. 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$9,700. The Tenant is provided with this Order in the above terms, and they must serve it to the Landlord as soon as possible. Should the Landlord fail to comply with this Order, the Tenant may file the Order in the Small Claims Division of the Provincial Court where it may 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 s. 9.1(1) of the *Act*.

Dated: September 1, 2022

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Residential Tenancy Branch