



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

The Tenants (hereinafter, the “Tenant”) filed an Application for Dispute Resolution on February 14, 2022 seeking compensation from their former Landlord. This is related to former Landlord’s issuance of a Notice to End Tenancy for the landlord’s Use of Property (the “Two-Month Notice”). issued on September 28, 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 26, 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 Landlord with the Notice of Dispute Resolution 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 24, 2022. This is two days after the Residential Tenancy Branch issued the Notice to the Tenant. 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, being that single

address provided on the original tenancy agreement, and the Two-Month Notice. The Tenant stated that the package they sent included all the evidence they intended to rely on for this hearing. They provided an image of the envelope showing the registered mail label and address on the front of it, clearly labelled.

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

The Tenant provided a copy of the tenancy agreement they had with the Landlord, and they spoke to the relevant details in the hearing. The agreement started January 1, 2021, set to end after the fixed term on December 31, 2021. The indication in the agreement is that it would become a month-to-month agreement at that time, and there was no requirement for the Tenant to leave at the end of the fixed term.

At the outset of the tenancy and in their preliminary discussions with the Landlord, the Tenant desired an agreement that was more longer term. In the hearing the provided that they entered this agreement with that assurance from the Landlord in place.

The tenancy ended when the Tenant handed the keys back to the Landlord on December 27, 2021. They had another living arrangement secured by the start of December 2021; however, the Landlord would not allow them to move out prior to the end of December, and granted this final month to the Tenant rent-free even though the Tenant was not in the rental unit for that final month. This precluded the Tenant from negotiating with the Landlord for the final, statutory-delineated rent-free month to be November, as suited their move to their new living arrangement.

The Tenant paid \$2,650 per month in rent from the start of the agreement through to the end of the tenancy. This amount forms the basis for their claim for compensation.

The Tenant provided a copy of the Two-Month Notice issued by the Landlord on September 28, 2021. This gave the move-out date of December 31, 2021. On page 2, the indication is that the Landlord or their spouse would occupy the rental unit.

The Tenant provided evidence on communication with the Landlord over the course of the tenancy that demonstrated to them that the Landlord had the true intention to sell the rental unit. Prior to the tenancy, the Landlord listed a sale, the document showing this was on the counter of the rental unit when the Tenant first moved in. At that time the property manager who handled the move-in noted that the Landlord abandoned their intention to sell the rental unit, making the unit available for rental to this Tenant.

Additionally, in April of 2021 the Landlord emailed to the Tenant asking them to accommodate showings within the rental unit to prospective purchasers. This inconvenienced the Tenant greatly at the time of public health measures. This occurred in June, and at one point a photographer arrived to take pictures of the rental unit for the purpose of sales material.

Prior to service of the Two-Month Notice, the Landlord's agent texted to find out about the Tenant's own plans. The Tenant stated they wish to say, and that agent had said to them '[the Tenant doesn't] need to worry about the Landlord wanting to sell before the end of the tenancy agreement.'

When the Tenant received the Two-Month Notice, they challenged the issuance of that document to them by asking the Landlord 'are you sure?'. They offered to pay an extra 15% of the rent amount in order to stay.

In February 2022, the Tenant noticed online ads showing the rental unit for sale. Copies of this appear in the Tenant's evidence, from a few different sales platforms, as the Tenant described in the hearing. One of these ads shows the listed date of February 6, 2022. Another ad shows the posted date of February 7, 2022.

Additionally, the Tenant described visiting to the rental unit building in January to inquire on any packages sent to them after their move out. The concierge in the building noted there were no parties present for the rental unit to receive any mail sent there.

On their Application, the Tenant provided the total amount of their claim as \$31,800. This is based on 12 months of rent at \$2,650 per month.

### Analysis

Under s. 49(3) of the *Act* a landlord may end a tenancy if they or a close family member 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 . . . must pay the tenant . . . an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord . . . 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 is the party who ended the tenancy via Two-Month Notice issued to the Tenant on September 28, 2021. The Tenant provided sufficient evidence to establish that the Landlord did not accomplish the stated purpose for ending the tenancy. That is, the Landlord did not occupy the unit on their own as stated in the Two-Month Notice. I find the evidence shows the rental unit was listed for sale as early as February 2022. Other advertisements verify that the rental unit was on sale at that time.

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 online ads provided by the Tenant show active postings for sale at the start of February 2022. 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 \$2,650. This is \$31,800.

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 Landlord.

Conclusion

Pursuant to s. 51 and s. 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$31,900.00. 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 26, 2022

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Residential Tenancy Branch