



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC

### Introduction

The Tenant seeks an order pursuant to s. 51 of the *Residential Tenancy Act* (the “Act”) for compensation equivalent to 12 times the monthly rent payable under the tenancy agreement.

K.G. appeared as the Tenant.

The Tenant affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Tenant confirmed that she was not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant advised that she served the Notice of Dispute Resolution via registered mail on February 11, 2022. A copy of the tracking receipt was put into evidence by the Tenant as proof of service. The Tenant confirmed the address the registered mail was sent. I find that the Notice of Dispute Resolution was served in accordance with s. 89 of the *Act* by way of registered mail sent on February 11, 2022. Pursuant to s. 90 of the *Act*, I deem that the Landlord received the Notice of Dispute Resolution on February 16, 2022.

The Landlord did not attend the hearing, nor did someone attend on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Landlord did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

### Issue to be Decided

- 1) Is the Tenant entitled to compensation under s. 51 of the *Act* equivalent to 12 times the monthly rent payable under the tenancy agreement?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Tenant confirmed the following details with respect to the tenancy:

- She took occupancy of the rental unit on July 1, 2021.
- She vacated the rental unit on December 31, 2021.
- Rent of \$1,450.00 was payable on the first day of each month.
- She paid a security deposit of \$600.00 to the Landlord.

The Tenant testified that she was served with a Two-Month Notice to End Tenancy (the “Two-Month Notice”) by the Landlord on the basis that a close family member would occupy the rental unit. The Tenant indicates she moved out of the rental unit in accordance with the effective date set out in the Two-Month Notice.

The Tenant further testified that on January 15, 2022 she was notified that by a friend who continues to live at the property that the Landlord’s cousin moved into the rental unit. I was further advised by the Tenant that the Landlord was to be getting married in the summer of 2022 and that it was her understanding that the space would be used to accommodate guests that would be visiting from out of country.

The Landlord did not attend the hearing and did not provide evidence in response to the Tenant’s application.

### Analysis

The Tenant seeks compensation under s. 51 of the *Act* after being served with the Two-Month Notice.

Pursuant to s. 51(2) of the *Act*, a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement when a notice to end

tenancy has been issued under s. 49 and the landlord or the purchaser who asked the landlord to issue the notice, as applicable under the circumstances, does not establish:

- that the purpose stated within the notice was accomplished in a reasonable time after the effective date of the notice; and
- has been used for the stated purpose for at least 6 months.

I accept the undisputed testimony of the Tenant that she was served with the Two-Month Notice, which was issued under s. 49 of the *Act*. I further accept her undisputed testimony that she vacated the rental unit pursuant to the Two-Month Notice.

As made clear by the wording of s. 51(2) of the *Act* itself, which is confirmed by Policy Guideline #50, the onus of proving the Tenant is not entitled to compensation under s. 51(2) rests with the Landlord and that evidentiary burden is discharged by showing the purpose of the notice was accomplished within a reasonable time and for at least 6 months. In this instance, the Landlord did not attend the hearing to show that the purpose stated in the Two-Month Notice, being that it was to be occupied by a close family member, was accomplished and for at least 6 months.

I find that Landlord has failed to establish that the purpose of the Two-Month Notice was accomplished at all or that it was accomplished for at least 6 months. Accordingly, I find that the Tenant is entitled to compensation equivalent to 12 times the month payable under the tenancy agreement.

I would note the following definition in s. 49(1) of the *Act* with respect to who qualifies as a "close family member":

**"close family member"** means, in relation to an individual,  
(a) the individual's parent, spouse or child, or  
(b) the parent or child of that individual's spouse;

It does not include an individual's cousin.

I accept the Tenant's undisputed testimony that monthly rent of \$1,450.00 was payable under the tenancy agreement. Given this, I find that the Tenant is entitled to \$17,400.00 in compensation under s. 51(2) of the *Act* ( $\$1,450.00 \times 12 = \$17,400.00$ ).

Conclusion

The Tenant is entitled to compensation under s. 51(2) of the *Act* as the Landlord failed to prove that the purpose stated within the Two-Month Notice was accomplished or that it was accomplished for at least 6 months.

I order that the Landlord pay **\$17,400.00** to the Tenant.

It is the Tenant's obligation to serve the monetary order on the Landlord. If the Landlord does not comply with the monetary order, it may be filed by the Tenant with the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: September 12, 2022

---

Residential Tenancy Branch