



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?

### Background and Evidence

The following are agreed facts: the tenancy under written agreement for a whole house that included a side suite started on April 3, 2020 and ended on September 30, 2021. Monthly rent of \$3,500.00 was payable during the tenancy. The security and pet deposits have been dealt with. The Landlord gave the Tenant a two month notice to end tenancy for landlord’s use dated August 24, 2021 (the “Notice”). The Notice sets out an effective date of October 31, 2021 and that the Landlord or the Landlord’s spouse will occupy the unit.

The Landlord states that they do not have a spouse. The Landlord states that the Landlord occupied the whole house as of October 1, 2021. The Landlord states that it has utility bills and a driver's licence that shows their residence at the house. The Landlord confirms that copies of this evidence has not been provided for this hearing. The Landlord states that the side suite is not rented. The Landlord provides a copy of a flight quarantine document for December 22, 2021 and states that the Landlord had to quarantine after this date at the house. It is noted that there is no residential address on this document. The Landlord provides a hotel receipt for January 6, 2022. It is noted that no residential address is included on this receipt. The Landlord provides a photo of a package as evidence of its delivery to the house and states that it also shows that the package was collected January 3, 2022. The Landlord states that it has call records to show communications in relation to the quarantine at the house.

Tenant states that the Landlord did not occupy the unit and that the house, other than the side suite, has been empty since the end of the tenancy. The Tenant states that the side suite has been rented. The Tenant provides an audio recording of a neighbour about the occupancy of the house and a witness statement about the rental of the side suite.

### Analysis

Section 51(2) of the Act provides that 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 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, except in respect of the purpose specified in section 49 (6) (a), 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.

Section 51(3) of the Act provides that the director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as applicable, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
- (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

None of the Landlord's supporting evidence provides any indication of where the Landlord resides or that the Landlord occupies the unit. Although the Landlord states that they have supporting evidence of their occupation of the unit, none was provided, and the Landlord had significant time to collect and provide this evidence. For these reasons and given the Tenant's witness supported evidence of the main part of the house being empty and the side suite being rented, I find on a balance of probabilities that the Landlord has not substantiated that they occupied the unit for any amount of time. As there is no evidence that the Landlord was prevented from occupying the unit, I find that the Tenant has substantiated an entitlement to compensation of **\$42,000.00** (12 times the monthly rent of \$3,500.00). As the Tenant's claim has been successful, I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$42,100.00**.

### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$42,100.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: October 26, 2022

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Residential Tenancy Branch