



# 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 as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for compensation of \$12,000.00 from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property dated August 14, 2021; and to recover his \$100.00 Application filing fee.

The Tenant, his spouse, G.V. and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing, the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### **Service of Notice of Hearing and Parties' Evidence**

I considered service of the Notice of Dispute Resolution Hearing documents and the Parties' evidence to each other. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that he served the Landlord with the Notice of Hearing documents and evidence "a long time ago". The Tenant also said he served the RTB and the Landlord with additional evidence on September 22, 2022.

The Landlord said he received the Tenant's first package on March 9, 2022, "and then nothing". The Tenant said he sent his packages by registered mail; however, he did not have tracking numbers to proof service. Given the Landlord's testimony of receiving the Tenant's Notice of Hearing and initial evidence on March 9, 2022, I find I can consider the Tenant's Application and his first set of evidence. However, I will not consider the Tenant's evidence that he alleges to have sent the Landlord on September 22, 2022.

The Landlord said he served the Tenant with his evidence by registered mail on

October 15, 2022, and he said it shows a notice card was delivered, but that the Tenants did not pick up the mailing until Friday, October 21, 2022. The Landlord said his mailing was available for the Tenant for over seven days prior to the hearing. The Tenants said they received it on the Friday before the Monday hearing, but that they have not had a chance to review it. The Landlord gave me a tracking number for his registered mail in the hearing; however, it did not have enough numbers for a typical Canada Post tracking number, and it did not relate to anything in the Canada Post tracking system website. As such, I find that the Landlord has not proven service within the Rules on a balance of probabilities, and I will not consider the Landlord's evidentiary submissions in making my decision. Rule 3.16 states:

At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

Further, Rule 3.15 states:

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. .

[emphasis added]

#### Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and they confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider the documentary evidence that is before me, and to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

#### Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of the \$100.00 Application filing fee?

### Background and Evidence

The Parties agreed that the periodic tenancy began on February 1, 2013, with a (final) monthly rent of \$1,000.00, due on the first day of each month for this two-bedroom rental unit. The Parties agreed that the Tenant paid the Landlord a security deposit of \$325.00, and no pet damage deposit. The Landlord confirmed that he still holds the Tenant's security deposit.

The Parties agreed that the Tenant vacated the residential property on December 5, 2021, and that he texted the Landlord his forwarding address on that day, as well. The Tenant said that the Landlord has been to the Tenant's current address, so he knows where the Tenant lives.

The Parties both submitted copies of the Two Month Notice, which was signed and dated August 14, 2021, and which has the rental unit address. The Two Month Notice was served in person on August 14, 2021, with an effective vacancy date of October 14, 2021, which is automatically corrected to October 31, 2021, by the Act. The Two Month Notice was served on the grounds that the rental unit will be occupied by the father or mother of the Landlord or the Landlord's spouse.

The Tenant explained his claims in the hearing, saying:

They vacated us for personal use - for their Mom – because of her difficulties and their need for more space. They asked us to move, but instead, they turned around and rented the property. He has two basement units over there - the other unit has a tenant. Ours was four people, and he evicted us instead of them. He then rented it out at a higher price. As soon as we moved out - within a week - a 'For Rent' sign was up. It was not used for personal use, but he put it for rent.

The Landlord said:

My one bedroom tenant is also moved on the 22<sup>nd</sup>. He also moved to a townhouse and gave me notice for moving on December 16. I told [the Tenant] this whole story, showed him the new townhouse - that's why there was the sign for the one bedroom basement suite. I told him this whole story.

The Tenant responded:

We uploaded a recording; when we saw the basement for rent, I had my friend call [the Landlord] and we enquired, and [the Landlord] said it is a two bedroom

basement. The recording is uploaded.

The Tenant uploaded a copy of the conversation with the Landlord that the Tenant said happened in December 2021, after he saw the for rent sign on the residential property. In the conversation, the Tenant asked the Landlord when the unit was for rent, and how much it costs for four people. The Landlord said it was available on January 1<sup>st</sup> and that the rent would be \$1,550.00. The Tenant asked for the person's name in the recording, and the Landlord said and spelled his name to the Tenant. I find that the person telling the Tenant about the rental unit was the Landlord before me.

In his March 2022 evidence, the Tenant also submitted a photograph of a house with the residential property street address and a "For Rent" sign in the window.

In the hearing, the Landlord said: "He can't use a recording; it is illegal to record a conversation. I haven't seen any evidence he submitted to me. I need equal opportunity to view evidence that we're going to talk to."

However, the Landlord did not provide any evidence or authority indicating that the Tenant had done anything illegal by recording his telephone conversation with the Landlord. Further, the Landlord said he received the Tenant's Notice of Hearing package and evidence in March 2022, which contained this recording.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 67 of the Act allows an arbitrator to determine the amount of compensation to be awarded to a party, if another party has not complied with the Act, the regulations, or a tenancy agreement. The party claiming the damage or loss bears the burden of proof on a balance of probabilities.

Section 51 (2) of the Act states that a landlord must pay the tenant an amount that is equivalent to 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 the Two Month Notice dated August 14, 2021, the Landlord indicated that the Landlord or a close family member – the Landlord or his spouse’s father or mother - intends to occupy the rental unit. However, the Tenant submitted evidence that instead of being occupied by the Landlord’s family member, the rental unit was placed on the market for rent. The Tenant provided photographic and audio/video evidence showing that the rental unit was available to be rented as of January 1, 2022, which was less than a month after the Tenant vacated the rental unit, due to the Two Month Notice.

I accept the evidence that the Landlord did not use the rental unit for the purpose stated on the Two Month Notice. Consequently, I find that the Tenant is entitled to, and I award the Tenant with **\$12,000.00** - the equivalent of 12 times the monthly rent of \$1,000.00 - payable under the tenancy agreement, pursuant to sections 51 and 67 of the Act.

Given the Tenant’s success in his Application, I find he is also entitled to recover the **\$100.00** Application filing fee from the Landlord, pursuant to section 72 of the Act. Accordingly, I grant the Tenant a Monetary Order of **\$12,100.00** from the Landlord pursuant to sections 51 and 67 of the Act.

### Conclusion

The Tenant was successful in his Application for compensation from the Landlord pursuant the Two Month Notice, as the Tenant provided sufficient evidence to meet his burden of proof on a balance of probabilities.

The Tenant is granted a **Monetary Order** of **\$12,100.00**, from the Landlord representing recovery of 12 months of rent and the **\$100.00** Application filing fee. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) 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: October 24, 2022

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Residential Tenancy Branch