



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC, FFT

### Introduction

The former Tenant (hereinafter, the “Tenant”) filed an Application for Dispute Resolution on February 17, 2022 seeking compensation from the Purchaser of their former rental unit. This was related to the Purchaser’s end to the tenancy. 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 *Residential Tenancy Act* (the “Act”) on October 6, 2022. Both parties were present at the hearing, and each had the opportunity to ask questions on the process and present oral testimony during the hearing. The Purchaser confirmed they received notice of this hearing directly from the Tenant via registered mail, along with the Tenant’s prepared evidence. The Tenant confirmed they received evidence from the Purchaser.

### Issue to be Decided

Is the Tenant entitled to monetary compensation for the Two-Month Notice to End Tenancy for Purchaser’s Use of Property, 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 did not provide a copy of the tenancy agreement that they had with their former landlord; however, they provided a copy of the application form they completed on May 15, 2013. The tenancy started on June 1, 2013. This application form shows

the rent amount starting at \$1,495. Over the course of this tenancy that amount increased to \$1,670 up to the end of the tenancy.

In the hearing the Purchaser indicated they had no idea about any of the terms of the original tenancy agreement, including the amount of rent. They did not receive a copy at the time of the sale. They became the owner prior to the end of this tenancy, in 2021.

The Purchaser, via the Tenant's then landlord, issued the Two-Month Notice on November 2, 2021, serving it to the Tenant via email. This notified the Tenant of the sale of the rental unit, and that the Purchaser asked for the landlord to serve the Two-Month Notice because of their or their family member's need to occupy the rental unit. In this document, the landlord notified the Tenant of the end-of-tenancy date of January 31, 2022.

The Tenant signed a Mutual Agreement to End Tenancy with the landlord, agreeing to a move-out on January 31, 2022. The Tenant in the hearing stated they thought they signed this document on November 12, 2021, and their evidence shows they agreed to provide this to their former landlord (who asked for them to sign it) on that same date.

The Tenant stated that the tenancy ended when they moved out from the rental unit on December 14, 2021. Evidence for this is the Tenant's "Move-out Form" they provided in their evidence.

*i. the Purchaser's position*

The Purchaser presented that their intention was to downsize from their living arrangement, and they intended to have their child attend the particular school in the area of the rental unit. This was the reason they intended to end the tenancy at the time their purchase was to complete on February 1, 2022.

On November 24, the Purchaser's parent attended to the hospital at emergency, and was diagnosed with cancer. They were discharged on December 4, and the purchaser's parent then moved to the Purchaser's home (*i.e.*, not the rental unit). The Purchaser realized they were unable to move to the rental unit as was their plan at the end of January. They made this decision after the Tenant had already moved out on December 14.

The Landlord provided an affidavit, affirmed September 12, 2022, in which they set out the following:

- the completion date with vacant possession was set for February 1, 2022, as shown in the Purchase & Sale Agreement they provided
- they had the “honest and good faith intention to reside at the [rental unit] after February 1, 2022”, and then sell their own home
- they had researched about a good school in the area, and this choice of school was “among the primary reasons I wanted to move into the [rental unit] property”
- the type of cancer with which their parent was diagnosed was “uncurable” with “palliative care” being the “only option” – this prompted the Landlord’s decision that their parent could no longer live by themselves, and the Landlord decided their parent would move in with them at their own home, and not the rental unit – this was to spend time with that parent, and to assist with cooking and cleaning and that parent’s mobility challenges. The Purchaser attached the hospital discharge report as an exhibit to their affidavit.
- the Purchaser’s own home was more ideal for their parent in that condition, with a main floor bedroom and bathroom available – the rental unit, by contrast, has no bedroom or bathroom on the main floor
- they would stay in their own home with their parent and rent out the rental unit, and “eventually relocate to the [rental unit] property” in time for their child to begin attending school at their desired locale
- they moved the completion date for their purchase of the rental unit property to January 13; this was because the Tenant was moving out earlier than the original end-of-tenancy date of January 31.

The Purchaser in their affidavit noted specific points on the Mutual Agreement to End Tenancy (the “Mutual Agreement”) that the Tenant signed in November:

- it provides that it is not a Notice to End Tenancy, with neither party under obligation to sign that form
- the tenancy will end “with no further obligations between landlord(s) or tenant(s), and this may include foregoing any compensation [the Tenant] may be due if [the Tenant] [was] served a Notice to End Tenancy”
- the tenancy will end on January 31, 2022 at 1:00pm.

*ii. the Tenant's position*

The Tenant presented that on September 2, 2021 their former landlord initially notified them of the upcoming sale of the rental unit.

In their evidence they showed an email from the realtor stating their landlord would “getting in contact with you over the next few days to provide you with the 2 clear months notice to vacate [*i.e.*, the Two-Month Notice].” This was the Two-Month Notice document, coming from the realtor to the landlord to serve on the Tenant. On November 3, 2021 the landlord forwarded the Two-Month Notice to the Tenant.

The Tenant did not formally challenge the validity of the Two-Month Notice through a dispute resolution process.

After the Purchaser – via the landlord – issued the Two-Month Notice on November 2, 2021, the Tenant signed a Mutual Agreement to End Tenancy with the landlord, agreeing to the move-out date of January 31, 2022. In the hearing, the Tenant stated they were “repeatedly sent emails [from the realtor] to have a mutual agreement.”

On November 11, 2021 the realtor contacted the Tenant and asked for their “acknowledgement on the 2 clear months [*i.e.*, the Two-Month Notice] notice we have filed”.

On that same date, the landlord contacted the Tenant and stated “

I just am sending you a form I need to be signed and sent back. The new owner needs it. If you could get it back to me as soon as possible that would be greatly appreciated. It just states that you will be out on January 31<sup>st</sup> by 1pm.

The following day, the landlord asked for the “document signed and to me today please.” The Tenant responded: “Yes, I will send the signed document to you later this afternoon.” In the hearing, the Tenant stated that they signed the Mutual Agreement to End Tenancy “under false pretences.”

The Tenant relocated to their new living arrangement that was very near their former rental unit. After their move-out, the Tenant discovered the Purchaser’s online ad seeking new tenants for the rental unit. The Tenant provided the copy of the online advertising for the rental unit, undated, showing a posted rent amount of \$2,680 per month.

The Tenant also provided the account of a third party, sent to them via email, describing the third party’s communication with the Purchaser regarding a possible new tenancy, in

response to the online ad. This third party described the Purchaser as a “realtor” who “just bought the home but would be living elsewhere . . .” The Tenant included an excerpt of this third party’s inquiry to the Landlord about the availability of the rental unit. Noted in that dialogue is the Landlord’s statement “a few ppl come to check too” and “I bought this property just for my [child] can go to [the nearby school].” The dialogue ended with the Landlord agreeing to send the third party an application for tenancy at the rental unit.

In the hearing, the Tenant reiterated that they told the realtor for the Purchaser they intended to stay, and could not understand why the rental unit was not offered to them – at an even higher rent – when the Purchaser sought to re-rent the rental unit in early 2022.

The Tenant also presented a letter from a lawyer representing the Purchaser. This was an offer some sum of money in answer to the Tenant’s Application for this hearing. The Tenant responded to state the matter would be decided via this hearing process.

### Analysis

Under s. 44(1)(c), a tenancy may end where a landlord and a tenant agree in writing to end the tenancy. This is the foundation for a “Mutual Agreement To End Tenancy”.

Under s. 49 of the *Act* a Purchaser (via a landlord as per s. 49(5)(c)) may end a tenancy if they or a close family member intends in good faith to occupy the rental unit. The Purchaser here issued the Two-Month Notice, via the Tenant’s landlord, for this reason.

There is compensation awarded in circumstances where a Purchaser issues a Two-Month Notice. This is covered in s. 51:

- (1) A tenant who receives a notice to end a tenancy under section 49 is entitled to receive from the landlord on or before the effective date of the landlord’s notice an amount that is the equivalent of one month’s rent payable under the tenancy agreement.
- (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.
- (3) The director may excuse the landlord . . . from paying . . . if, in the director's opinion, extenuating circumstances prevented the landlord . . . 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 . . . for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The onus is on the Purchaser to prove that they accomplished the purpose for ending the tenancy and that they used the rental unit for its stated purpose for at least 6 months. Failing this, the Purchaser must present that extenuating circumstances prevented this.

The Purchaser in their affidavit and in the hearing presented that there was a Mutual Agreement to End Tenancy in place, signed by the Tenant. I find this was utilized by the realtor on the Purchaser's behalf only to confirm with the Tenant that they would be moving out from the rental unit by January 31, 2022. This simply confirmed the vacancy date as set out in the Two-Month Notice. I find it was not possible for the Landlord to unilaterally withdraw the Two-Month Notice, especially in this fashion via email, where it was worded from the landlord that "The new owner needs it." and "It just states you will be out on January 31<sup>st</sup> by 1pm."

Given that this form emanated from the realtor, via the landlord to the Tenant, I find the reason thereof was not fully clear to the Tenant. Should the Purchaser wish to rely on the Mutual Agreement to End Tenancy as a means of having the Tenant forego any other legal rights, then I would find there was an element of coercion present. However, my finding is limited to the simpler use of that form: to have the Tenant's firm commitment, in tandem with no Application to dispute the Two-Month Notice, that they would be out from the rental unit by January 31, 2022.

Alternatively, I note the information on the Mutual Agreement:

This form is NOT a Notice to End Tenancy. Neither a Landlord nor a Tenant is under any obligation to sign this form. By signing this form, both parties understand and agree the tenancy will end with further obligation between landlord(s) or tenant(s). **If you are the tenant, this may**

**include foregoing any compensation you may be due if you were served a Notice to End Tenancy.**

I find this form does not supplant or otherwise negate the Two-Month Notice that was in place and did not mean the Tenant was foregoing compensation that may have been due to them. The use of “may” on the form makes a tenant aware; however, this is an indication that something will possibly not happen to be true in the future, without certainty. With no other compensation from the Purchaser to the Tenant for agreeing to mutually end the tenancy, I find it is not an enforceable agreement with respect to the Tenant’s rights conferred under s. 51 of the *Act*.

In sum, I find the Landlord cannot rely on the use of this Mutual Agreement to End Tenancy form to show the Tenant was aware of their rights and agreed to forego those rights.

With regard to the use of the rental unit, I find the Purchaser in paragraph 14 of their affidavit acknowledged they rented out the rental unit to new tenants. This was in relatively short order after the tenancy ended, after the Tenant moved out from that property in mid-December. Stated thus, I find the Purchaser did not accomplish the stated purpose for which they ended the tenancy.

I find the Landlord presented ample evidence to show that extenuating circumstances were present, meaning they were prevented from accomplishing the stated purpose for ending the tenancy. This involved an illness of their family member, and the Landlord produced irrefutable proof of that illness and its severity. With this finding, I thereby excuse the Landlord from paying compensation to the Tenant in the amount of 12 times the monthly rent payable under the tenancy agreement.

There was no record of the Tenant receiving the equivalent of one month’s rent payable under the tenancy agreement. Above, I found the Tenant was not precluded from their rights conferred by s. 51 of the *Act* because of the Mutual Agreement to End Tenancy. With no record of one month’s rent paid to the Tenant, or the final month granted rent-free, I grant the Tenant a monetary order for that amount: \$1,670.

The Tenant was only moderately successful in their claim; for this, I grant the amount of \$30 as partial recompense for the Application filing fee.

### Conclusion

I order the Purchaser to pay the Tenant the amount of \$1,700. I grant the Tenant a monetary order for this amount. Should the Purchaser fail to comply with this Order after the Tenant serves it, the Tenant may file this monetary order in the Provincial Court (Small Claims) 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: November 4, 2022

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Residential Tenancy Branch