



# 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 \$10,500.00 from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property dated July 9, 2021 ("Two Month Notice"); and to recover his \$100.00 Application filing fee.

The Tenant and an advocate for the Landlord, S.G. ("Advocate"), 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 Advocate 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.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### 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 their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they were 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 October 1, 2019, with a monthly rent of \$875.00, due on the first day of each month. They agreed that the Tenant paid the Landlord a security deposit of \$375.00, and a pet damage deposit of \$375.00. They also agreed that the Landlord returned these deposits at the end of the tenancy. The Parties agreed that the Tenant moved out on September 1, 2021, but that he did not provide the Landlord with his forwarding address in writing.

The Tenant was given notice of the end of the tenancy when the Landlord served him with the Two Month Notice that was signed and dated July 9, 2021, and which has the rental unit address. The Two Month Notice was served by attaching a copy to the rental unit door on July 9, 2021, with an effective vacancy date of September 30, 2022. The Two Month Notice was served on the grounds that the rental unit would be occupied by the father or mother of the Landlord or those of the Landlord's spouse.

In the hearing, the Tenant explained his claim, as follows:

Based on Two Month Notice, it said they would use it for the father or mother of the Landlord or the spouse. In the notice to end tenancy, if they didn't do so for six months, then I could be compensated for 12 months payable - the amount claimed.

I asked the Tenant how he thought the Landlord used the rental unit after he vacated it. He said: "On November 15<sup>th</sup>, I saw an ad for the former suite for rent for way more than I paid for it, They evicted me for financial gain."

The Tenant submitted copies of advertisements indicating it was the rental unit, given details such as the cross-street address and the Landlord's first name and telephone number. These advertisements included map links, which revealed the location of the residential property being advertised. One of the advertisements said the Landlord was looking for tenants for December 1, 2021.

The Agent responded:

For my initial comment, I refer you to a letter written by [J.S., the Landlord] – it was attached to the Two Month Notice. He writes that the form was invalid for the type of rent. [The Tenant] was a room rental. Section 4 (c) says it is not applicable to the Act. [The Landlord] shared common space with [the Tenant] – kitchen and living room – the open space upstairs. The Tenant is stating that he was the only one in the upper space.

The upper suite has three bedrooms, and he was renting one bedroom and one bathroom. All tenants on the upper floor shared a kitchen and common space. The Landlord lives on the lower suite.

The Tenant responded:

The common area she is referring to was never shared by the Landlord and other tenants, as I was the only Tenant the whole time there. See evidence [the Landlord] submitted, which referred to multiple other tenants. No one ever used the kitchen or common area – it was my own kitchen – [the Landlord] has lied throughout this evidence in an attempt to defend not having to pay this claim. The lower suite has it's own kitchen and bathroom, so it is ridiculous that they would use my common area.

The Agent said:

I have a document called Reference A – a pre-tenancy application form. In that the commencement states it's a private room plus bathroom. Reference B is an advertisement on a [public online platform]. It also says it's a private room and washroom.

I asked the Agent if the Tenant is lying about use of the kitchens. The Agent said:

It is a kitchen downstairs. They have stairs to the upper suite – closed by a door. It's easy access to upstairs and downstairs. [The Landlord] would use those kitchen facilities.

He has an elderly grandmother with nurses coming early. I'd like to emphasize the pre-tenancy application form, which states it's for a private room and bathroom. He was not entitled to the entire upper suite; there were other tenants living there. It's not his entire suite.

The Tenant said:

Reference A – the pre-tenancy form says it's a private room and bath, which I discussed with [the Landlord]. This pre-tenancy application is nice, but I asked for the tenancy agreement over several months, but he wouldn't provide it.

Reference B – the ad on [the public online platform] – is an advertisement for the space. [The Landlord] had multiple ads on [the public online platform], so this is just a random ad.

Reference E – in [the Landlord's] evidence paragraph five – Ms. [G.K.] asked them to move out. She states that we had our individual bedroom and bathroom – neither were mine - while sharing the common space and kitchen facilities. That's a lie. I never shared the space with any Landlords or [G.K.]. [G.K.] was an *au pair* taking care of their elderly grandma and going to school. She slept in a room upstairs, but didn't use my bathroom. Where is [G.K.'s] tenancy agreement?

Also, [the Landlord] never used that kitchen upstairs; the idea that he would go upstairs because the downstairs is busy, is audacious.

Paragraph 2, line 3: "During that time we had multiple other tenants coming...". That's a lie - and for the use of the Landlord's family? A lie.

Reference C – re [Regional] health: there are no dates on these documents. I received them after the fact in defence of this claim. Also, they blacked out information that I believe to be the date.

Paragraph 4, line 1 – another lie – they do not share my kitchen.

Paragraph 4, line 3 – he's talking about text in reference D, where he says: "I'd like to clarify that the texts were not intending to imply that the workers were moving in the upper level". When [the Landlord] first told me that he wanted me out, he said it was for [fruit] pickers for his farm. I said I need it done properly, and suddenly his mother is moving in.

[The Landlord's] evidence bottom page – '...as we've had many other tenants renting out the other bedrooms and we all shared the common space'. There were never any other tenants.

The Tenant pointed to the following paragraphs in the Landlord's written evidence:

Due to the fact that we did room rentals, and had many different tenants come in and out of the space, we felt sanitization may be a concern. We began renovating the upper space for my grandmother on September 5, 2021. We replaced all flooring, changed the bathroom to be accommodating to the safety concerns, and created a larger kitchen space for my grandmother to maneuver around. We made our best effort to comply by [the regional] Health's recommendations for her mobility. We were finished renovating the upper space by September 12, 2021.

My grandmother moved to the upper level on September 20, 2021. She lived on the upper level alone for approximately 1.5 months. Ultimately, around the end of October/beginning of November, she said she wanted to move downstairs with us again. My grandmother told me although she enjoyed the peaceful space, she felt lonely and made a personal choice to live amongst her family again. After some discussions back and forth, we placed the upper level on rent once again.

As we previously did individual room rentals, each room was rented out for approximately \$875. Having 3 rooms, this generated \$2625 a month. Given that we just renovated the space, and sanitation was a concern, we decided this time to place the whole suite on rent as a full unit, rather than individual rooms. We felt it more appropriate to list the suite for \$2,300, although that meant being \$325 less than the previous rent.

We had no financial gain, motive, or malicious intent in this process. Mr. [L.S.] and our family's truest intention was to care and accommodate for my grandmother.

The Tenant said: "He reiterated 'multiple' at the bottom – that's a lie."

The Agent responded: "I wanted to address, earlier [the Tenant] said he was the only person using the upper level. Now he has stated that [G.K.] did live there on the upper level."

Actually, the Tenant said that [G.K.] was an *au pair* who slept in a room upstairs, but who didn't use the Tenant's bathroom, and he questioned that she was a tenant, as her tenancy agreement is not in evidence.

The Agent continued:

Re any evidence of workers moving in – the same text message is saying the upstairs needed to be tidy, because I might have workers moving in. It is a farm property and they have many units there for rent. Originally, they moved the workers upstairs, but their grandmother is very elderly - it would be easier to access her if she lived on the upper suite. Easy access up the stairs.

The upper space was for room rentals, and now Grandma moved upstairs..  
..She lived there for one and a half months; she liked it, but felt very alone. She has a hard time going up and down stairs. The family had many conversations and decided ultimately if the Grandmother's not okay on her own, we're okay with having her come back downstairs.

[The Tenant] paid \$875.00 a month. The rooms generated about \$2,000.00 plus - we lost money on renovating the space and losing tenants' rents. They wanted to recoup the costs, but the whole suite is listed for \$2,300.00, compared to earning \$2,600.00 for room rentals. They were losing out on money. In actuality, they had a loss due to the situation. There was no malicious intent. It was for their Grandmother. [The Tenant] noted an advertisement a few months later, that the upper suite is still vacant. It was not the goal of this situation.

The Tenant said:

Regarding the family deciding [to reverse their decision] after a month and a half, that could have been made prior to displacing me from my home - before evicting me from my home. If the fact that she decided to move back downstairs, because she was lonely, they could have put a lift on the stairs.

She mentioned I requested the form over and over again - paper work saying he wanted me to move out, because [the Landlord] was acting in bad faith. I went to the RTB and learned how the process worked. He didn't want to serve the paper work, because he didn't want to give me the one month free rent and this. I had to insist on rent receipts and my tenancy agreement, which never happened.

Regarding their losing money, and it not being for financial gain – they had to spend a bunch of money renovating. \$2,300.00 a month is a lot more than \$875.00 a month. Their intention was to rent it out from December 1, 2021. Their renting it out for less has nothing to do with it. Their sole intent was financial gain.

## Analysis

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

### Jurisdiction

The first issue I must consider is whether the Applicant is a “tenant” pursuant to the Act, as the Agent asserted that the Landlord used the kitchen in the upper rental unit, as well as the kitchen in the Landlord’s family’s residence downstairs. Section 4 (c) states that the Act does not apply to living situations in which a landlord shares a kitchen and/or bathroom with the tenant.

In the situation before me, I find the Tenant’s evidence more reliable than that of the Agent, as she did not indicate any reason why the Landlord would go upstairs to use the rental unit kitchen, when he had a kitchen in his own residence downstairs. I find it more likely than not that the Agent was given incorrect information in this regard from the Landlord. Accordingly, I find that section 4 (c) does not apply in this situation, that the Tenant’s situation is included in the Act, and that therefore, I have jurisdiction to render a decision in this matter.

### Compensation Relating to Two Month Notice

Pursuant to section 67 of the Act and RTB Policy Guidelines, a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Tenant must prove:

1. That the Landlord violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Tenant to incur damages or loss as a result;
3. The value of the loss; and,
4. That the Tenant did what was reasonable to minimize the damage or loss. .

(“Test”)

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 July 9, 2021, the Landlord indicated that the a close family member intends to occupy the rental unit. The Tenant moved out on September 1, 2021.

The Tenant gave evidence that instead of the unit then being occupied by the Landlord or a close family member, it was placed on the market for rent. The Tenant provided documentary evidence by way of the online listings showing that the rental unit was available as of December 1, 2021.

I find that the Agent did not dispute that the Landlord did not use the rental unit for the stated purpose for more than a month and a half, after which, they advertised it for rent for much more than the Tenant was paying for his tenancy. As noted above, section 51 states that the Landlord was required to use the unit for the stated purpose: "for at least 6 months duration". Whether the Landlord's grandmother moved to the rental unit or not, the undisputed testimony is that she was not there for at least six months duration.

I accept the evidence that the Landlord did not use the rental unit for the purposes stated on the Two Month Notice for at least six months. Consequently, I find that the Tenant is entitled to a monetary award of **\$10,500.00**, the equivalent of 12 times the monthly rent of \$875.00 payable under the tenancy agreement.

As the Tenant is successful in his Application, he is also entitled to recover his \$100.00 Application filing fee from the Landlord. I, therefore, award the Tenant \$10,600.00 from the Landlord pursuant to sections 51 and 67 of the Act.

I grant the Tenant a **Monetary Order** for **\$10,600.00**, which must be served on the Landlord, as soon as possible.

### Conclusion

The Tenant's claim for recovery of 12 times the monthly rent is successful in the amount of **\$10,500.00**. The Tenant is also awarded recovery of his **\$100.00** filing fee for this Application from the Landlord.



I grant the Tenant a **Monetary Order** under section 67 of the Act from the Landlord of **\$10,600.00**. This Order must be served on the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: November 09, 2022

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Residential Tenancy Branch