



# 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 by way of conference call in response to an Application for Dispute Resolution filed by the Tenant March 14, 2022 (the “Application”). The Tenant applied as follows:

- For compensation because the Purchaser ended the tenancy and has not complied with the Act or used the rental unit for the stated purpose
- To recover the filing fee

The Tenant and Purchaser appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Purchaser did not submit evidence. The Purchaser confirmed receipt of the hearing package and Tenant’s evidence and confirmed there are no service issues. The Tenant advised that two letters submitted to the RTB about service were not served on the Purchaser. I have not considered these two letters.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all admissible evidence provided. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Tenant entitled to compensation because the Purchaser ended the tenancy and has not complied with the Act or used the rental unit for the stated purpose?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

The Tenant sought \$24,000.00 in compensation pursuant to section 51 of the *Residential Tenancy Act* (the “Act”) based on the Purchaser failing to follow through with the stated purpose of a Two Month Notice to End Tenancy for Landlord’s Use of Property dated December 06, 2021 (the “Notice”).

The Tenant submitted a written tenancy agreement between them and I.V.L., the Tenant’s previous landlord. Rent in the agreement was \$2,000.00.

The Notice was submitted. The effective date of the Notice is March 01, 2022. The Notice was issued to the Tenant by E.I. The grounds for the Notice are:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The Purchaser, K.S.B., is named as the purchaser on the Notice.

Attached to the Notice is a Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession (the “Buyers Notice”) which states the following. That it is to I.V.L. That it relates to the rental unit address. That the undersigned buyer(s) or one or more of the spouse, children, and parents of the buyer(s) “intend in good faith to occupy” the rental unit. That the buyer(s) ask that the seller, I.V.L., give notice to the tenants of the rental unit terminating the tenancy March 01, 2022. The Purchaser, K.S.B., signed the Buyers Notice, as did two other buyers.

The Tenant testified as follows. E.I. owned the rental unit previously. The Tenant had a tenancy agreement with E.I. and I.V.L. E.I. served the Notice on the Tenant. The Tenant moved out of the rental unit March 01, 2022, pursuant to the Notice. Rent at the end of the tenancy was \$2,000.00 per month.

The Purchaser agreed the Tenant moved out of the rental unit March 01, 2022.

The Purchaser testified as follows. The Purchaser purchased the rental unit from I.V.L. and took possession of the unit in March of 2022. The Tenant had already moved when the Purchaser took possession of the rental unit. The Purchaser did not sign the Buyers Notice.

When questioned further about the Buyers Notice, the Purchaser testified as follows. The Purchaser did sign the Buyers Notice due to what a real estate agent told them. The real estate agent told them the rental unit was already empty and there would be no issue with the Purchaser signing the Buyers Notice. The real estate agent convinced the Purchaser to sign the Buyers Notice. The Purchaser knew the Buyers Notice was being given to E.I. or I.V.L.

In relation to their intention for the rental unit, the Purchaser testified as follows. The Purchaser purchased the rental unit with three other people. It was not the Purchaser's intention to move into the rental unit. The Purchasers' intention when they purchased the rental unit was to fix it up and re-rent it. Everything in the rental unit needed to be re-done so the Purchaser had to fix the rental unit and then put it up for rent. The Purchaser signed the Buyers Notice because the real estate agent convinced the Purchaser nothing would happen from doing so and told the Purchaser they should just sign it. After the Purchaser and others took possession of the rental unit, they renovated it. The Purchaser never moved into the rental unit. The Purchaser's family never moved into the rental unit. The Purchaser thought about moving into the rental unit in May of 2022. The Purchaser wanted to sell the house they currently live in; however, the market crashed and so they could not sell it.

The Tenant testified as follows. The Tenant previously rented the entire house. On March 14, 2022, 14 days after the Purchaser purchased the rental unit, it was put on the market for sale for \$250,000 more than the Purchaser paid for it. The MLS photos show that there were no extensive renovations done to the rental unit before it was put on the market for sale. On April 13, 2022, the Purchaser re-rented the property.

In reply, the Purchaser agreed the rental unit was put on the market for sale and said this occurred March 24, 2022. The Purchaser was not aware of the rental unit being re-rented.

The Tenant submitted screenshots of rental advertisements and a sales listing for the rental unit.

### Analysis

The Notice was issued pursuant to section 49(5) of the *Act* which states:

(5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
  - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit...

Section 51 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the *Act* and states:

(2) 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.

(3) 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.

RTB Policy Guideline 50 addresses compensation pursuant to section 51 of the *Act*.

Pursuant to section 51(2) of the *Act*, the Purchaser has the onus to prove that they, or a close family member, occupied the rental unit within a reasonable period after March 01, 2022, the effective date of the Notice, and did so for at least six months. The Purchaser also has the onus to prove extenuating circumstances pursuant to section 51(3) of the *Act*. Pursuant to rule 6.6 of the Rules, the standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I note at the outset that I do not find the Purchaser to be reliable or credible. The Purchaser gave conflicting testimony about two main points during the hearing, whether they signed the Buyers Notice and whether they ever intended to move into the rental unit. I find I cannot rely on the Purchaser's testimony in the absence of documentary evidence or other evidence to support it.

I find the Purchaser signed the Buyers Notice because the Purchaser's signature is on it and the Purchaser eventually acknowledged signing it. I find the Purchaser knew the Buyers Notice was given to E.I. or I.V.L. because the Purchaser eventually acknowledged this. I acknowledge that three individuals signed the Buyers Notice; however, I find the Purchaser is responsible for the Notice being issued because it is the Purchaser's name on the Notice as the person who asked the Landlord to issue the Notice.

I do not accept that anybody convinced the Purchaser to sign the Buyers Notice in the absence of further evidence to support this. Further, even if a real estate agent convinced the Purchaser to sign the Buyers Notice, I do not find that the real estate agent forced the Purchaser to sign it because there is no evidence of this before me. The Buyers Notice itself is very clear about what it is and the purpose of it. The Purchaser had a choice whether to sign it or not. The Purchaser could have chosen not to follow the advice of the real estate agent. The Purchaser chose to sign the Buyers Notice despite having no intention at that time to occupy the rental unit as claimed on the Buyers Notice. I find the Purchaser must now bear the legal consequences of signing the Buyers Notice and asking E.I. or I.V.L. to issue the Notice.

The Notice states that the Purchaser or a close family member intends in good faith to occupy the rental unit. This means the Purchaser, or a close family member, were required to occupy the rental unit for a residential use as living accommodation (see RTB Policy Guideline 2A).

I find neither the Purchaser nor a close family member ever occupied the rental unit for a residential use as living accommodation because the Purchaser acknowledged this.

I do not find extenuating circumstances apply here. I do not find that the Purchaser pointed to extenuating circumstances or relied on this section of the *Act*. Further, I find the Purchaser never intended to move into the rental unit and therefore, it was not extenuating circumstances that prevented the Purchaser from moving in.

The Purchaser did mention thinking about moving into the rental unit in May of 2022, at least two months after the effective date of the Notice. I understood the Purchaser to say they did not end up moving into the rental unit in May of 2022 because they could not sell their current residence due to the market. Thinking about moving into the rental unit at least two months after the effective date of the Notice does not comply with the requirement that the Purchaser accomplish the stated purpose of the Notice within a reasonable period after the effective date of the Notice because two months is not a reasonable period (see RTB Policy Guideline 50 page 3). Further, the market for selling homes changing is not an extenuating circumstance, it is a well-known and obvious possibility.

Nothing else presented by the Purchaser could be viewed as extenuating circumstances.

I note that what the Purchaser did here is exactly the circumstances section 51 of the *Act* is aimed at preventing.

I find section 51(2) of the *Act* applies because the Purchaser, or a close family member, never occupied the rental unit. I also find the Purchaser has not presented any extenuating circumstances such that section 51(3) of the *Act* applies.

I find the Purchaser must pay the Tenant twelve times the monthly rent being \$24,000.00 (\$2,000.00 x 12) pursuant to section 51(2) of the *Act*.

Given the Tenant has been successful in the Application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to \$24,100.00 and I issue the Tenant a Monetary Order in this amount.

### Conclusion

The Application is granted. The Tenant is entitled to \$24,100.00 and I issue the Tenant a Monetary Order in this amount. This Order must be served on the Purchaser and, if the Purchaser does not comply with the Order, it 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 *Act*.

Dated: November 17, 2022

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Residential Tenancy Branch