



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant's support person and the landlord's interpreter also attended the hearing. The interpreter affirmed to translate to the best of their ability.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision.

### Preliminary Issue- Service

The tenant testified that he served the landlord with this application for dispute resolution and evidence on April 15, 2022 via email. The landlord testified that he

received the tenant's application for dispute resolution via email on April 15, 2022. The landlord testified that he did not receive evidence in this email. I informed the landlord that the evidence the tenant is referring to is two text messages dated June 17, 2022. The landlord testified that he has received the above text messages. I find that the landlord was sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the tenant's application for dispute resolution and evidence because receipt for both packages was confirmed by the landlord.

The landlord testified that the tenant was served with the landlord's evidence via email on December 1, 2022. The tenant confirmed receipt of the landlord's evidence via email on December 1, 2022. I find that the tenant was sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the above documents because receipt was confirmed.

#### Issues to be Decided

1. Is the tenant entitled to a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed that the landlord purchased the subject rental property, and through the landlord's realtor, asked the seller of the subject rental property to serve the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice").

The Notice was entered into evidence and states that:

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 the Notice because the purchaser or a close family member intends in good faith to occupy the rent unit.

The purchaser listed on the Notice is the landlord. The Notice is dated May 31, 2021 and states that the tenant must move out of the subject rental property by August 10, 2021.

Both parties agree that the tenant had difficulty finding new accommodation and that the completion date and possession date of the contract of purchase and sale was amended to allow the tenant additional time to find alternative accommodation. The Contract of Purchase and sale and two addendums extending the completion and possession dates were entered into evidence. The final completion date was September 15, 2021 and the final possession date was September 16, 2021.

The tenant testified that he moved out of the subject rental property on September 15, 2021. The landlord testified that he does not know the date the tenant moved out. The tenant testified that rent was \$1,000.00 per month. The landlord testified that he does not know what the tenant's rent was.

The landlord testified that he moved into the subject rental property within a week of taking possession. The landlord testified that when he moved in, he was working and completing renovations to the subject rental property. The landlord testified that, at the moment, he does not have any documentary proof of when he moved in.

The landlord testified that the subject rental property has been his primary residence since he moved in. To prove that he resides in the subject rental property, the landlord entered into evidence a photograph of his driver's license, and a 2022 Property Tax Notice from the subject rental city.

The driver's license was issued on May 17, 2022 and expires on July 28, 2027. The driver's licence shows that the subject rental property is the landlord's address. The Property Tax Notice pertains to the subject rental property, states the landlord's name and is for the period of January 1, 2022 to December 31, 2022. The Property Tax Notice shows that the landlord applied for a homeowner grant.

The tenant testified that his mother lives near the subject rental property and he drove by the subject rental property on many occasions, and it was unoccupied. The tenant

testified that the windows were always cold and frozen, there were no tracks in the snow, and no smoke came from the chimney.

The tenant testified that the landlord also told him that his brother was moving in. The tenant testified that a brother is not a close family member as defined by the *Act*.

The tenant entered into evidence text messages from the landlord to the tenant dated June 17, 2022 which state:

- Landlord: Unfortunately, my brother is coming and needs a place to stay as he is retired and no longer working. Between him moving and the renovations I need to start, I won't be able to give another extension beyond the end of August. I can understand the struggles you are going through and am sorry the pandemic has increase the difficulty for you to find real estate. If there is anything else I could do to help, please let me know.
- Landlord: I am moving in this place use for myself my brother moving in helping me for renovations decided this price for retirement Understand haed to file the place for your animal. in the end .give me a good price. I buy them out. Let me know

[reproduced as written]

The landlord testified that he purchased the subject rental property for him and his brother to move into and renovate together. The landlord testified that he works full time and is not at home during the day.

The tenant testified that one month after he moved out of the subject rental property, he contacted the landlord to pick up some lumber he left at the property. The tenant testified that the subject rental property was empty at that time and had no furniture. The tenant testified that he and the landlord arrived via car at the subject rental property at the same time, and that the landlord was not already at the subject rental property.

The landlord testified that he was living at the subject rental property at that time and had come from a coffee shop, which is why he arrived by car. The landlord testified that the subject rental property is behind a fence and the tenant could not have seen into the subject rental property. The tenant testified that it is a chain link fence and the property is 25 feet away and he was able to see.

The landlord testified that the tenant does not have any evidence to prove that he did not move into the subject rental property.

### Analysis

Section 51 of the *Act* states:

51 (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] 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.

(1.1)A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2)If a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid.

(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.

Residential Tenancy Policy Guideline # 50 states:

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition)....

**The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49** or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

[Emphasis added]

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

### **Reasonable Period**

A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. For instance, given that a landlord must have the necessary permits in place prior to issuing a notice to end tenancy, the reasonable period to accomplish the demolition of a rental unit is likely to be relatively short. The reasonable period for accomplishing repairs and renovations will typically be based on the estimate provided to the landlord. This, however, can fluctuate somewhat as it was only an estimate and unexpected circumstances can arise whenever substantive renovations and repairs are undertaken.

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31<sup>st</sup> of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days....

### **Accomplishing the Purpose/Using the Rental Unit**

Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit for that stated purpose for at least 6 months.

I find that the landlord extended the completion and possession date of the sale of the subject rental property to provide the tenant with additional time to secure alternate accommodation. I find that a reasonable period of time for the landlord to move into the subject rental property would be 15 to 30 days from the date the landlord took possession of the subject rental property, that being September 16, 2021. I accept the tenant's testimony that he moved out of the subject rental property on September 15, 2021.

As noted above, the onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under section 49 of the *Act*. I find that the landlord has not proved that he moved into the subject rental property within a reasonable period of time after he took possession of the subject rental property as no documentary evidence to support such a move were entered into evidence.

I find that the evidence that was provided by the landlord, the driver's license and the Property Tax Notice, do not prove that the landlord moved into the subject rental property within a reasonable time period after the landlord took possession. The driver's license was issued May 17, 2022, some eight months after the landlord took possession. I find that the driver's license shows that the landlord now resides in the subject rental property, not that he moved in within a reasonable time period after he took possession.

I find that the Property Tax Notice shows that the landlord owns the subject rental property, pays taxes on it, and claimed a homeowner's grant, but does not prove, on a

balance of probabilities, that the landlord moved into the subject rental property within a reasonable period of time after he took possession. I note that the Property Tax Notice is for the period of January 1, 2022 to December 31, 2022. The landlord may have appropriately applied for a homeowner's grant for the above time period, but has not proved that he resided in the subject rental property prior to January 1, 2022, which is some 3.5 months after the landlord took possession.

As I have determined that the landlord did not prove, on a balance of probabilities, that he moved into the subject rental property within a reasonable period of time after he took possession, I find that pursuant to section 51(2) of the *Act*, the tenant is entitled to 12 months' compensation. I accept the tenant's undisputed testimony that rent at the subject rental property was \$1,000.00 per month, as such, I find that the tenant is entitled to \$12,000.00 from the landlord.

The landlord did not provide any testimony regarding extenuating circumstances that prevented him from accomplishing the stated purpose for ending the tenancy. I find that the landlord has not proved that extenuating circumstances prevented him from accomplishing the stated purpose for ending the tenancy.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

### Conclusion

I issue a Monetary Order to the tenant in the amount of \$12,100.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: December 09, 2022

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Residential Tenancy Branch