



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

The Applicant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 51(2) for compensation equivalent to 12 times the monthly rent payable under the tenancy agreement; and
- return of her filing fee pursuant to s. 72.

J.S. appeared as the Applicant and former tenant. J.X. appeared as agent for the Respondent.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

### Issues to be Decided

- 1) Is the Applicant entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement?
- 2) Is the Applicant entitled to the return of her filing fee?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Applicant testified to the following aspects respecting her former tenancy:

- She moved into the rental unit on November 30, 2018.
- She moved out of the rental unit on May 30, 2021.
- Rent of \$2,500.00 was due on the first day of each month.

The Applicant provides a copy of the tenancy agreement confirming these details. The Respondent's agent could not testify to the relevant details of the tenancy as she was representing the purchaser of the property who took possession after the tenancy ended.

The Applicant provides a copy of a Two-Month Notice to End Tenancy signed on January 22, 2021 (the "Two-Month Notice") with an attached Buyers' Notice to the Seller for Vacant Possession signed on January 21, 2021 (the "Buyers' Notice"). The Two-Month Notice and the Buyers' Notice list that the purchaser as the numbered company listed by the Applicant as the Respondent in her application. The Two-Month Notice lists its effective date as May 30, 2021.

The Respondent's evidence includes a copy of a purchase contract for the property signed on December 30, 2020 in which the purchaser is listed as D.C.. I have also been provided with two addendums by the Respondent in which the contract was assigned to two separate people. The first assignment was signed on January 21, 2021 in which D.C. assigned his place as purchaser under the contract to the Respondent. A second assignment took place on May 31, 2021 in which the Respondent assigned its place as purchaser under the contract to J.P.Z..

During the hearing, I enquired with the Respondent's agent what the relationship was between the various purchasers. I am advised by the agent that the shareholder for the corporate Respondent is the mother of J.P.Z.. It is unclear what relationship D.C. has with Respondent's shareholder or J.P.Z., though the agent tells me that D.C. decided to back out of the purchase due to matrimonial proceedings she was dealing with.

The agent argued that the shareholder mother lives overseas and intended to move into the residential property but that this was not possible due to restrictions associated with the Covid-19 Pandemic. In the agent's telling, the shareholder and her spouse decided that they would not come to Canada and rather assigned the purchase to their son. The agent further testified that the son lost his job overseas in December 2020 due to the pandemic, moved to Canada with the intention to remain here, presumably at the residential property, but ended up going moving overseas in July 2021 to follow his girlfriend. The agent confirmed that the residential property was rented to new tenants in August 2021.

The agent argued that the Respondent did not cheat the Applicant tenant but that 2020-21 were difficult years due to the pandemic and that life changes for the Respondent's shareholder and the son necessitated the residential property being re-rented. It was further argued that the Applicant was given more notice than required under s. 49.

The Applicant argued that the Respondent's intention was to re-rent the property at the outset. It was further argued by the Applicant that the pandemic and its associated restrictions were already in full swing when the property was purchased such that that ought to have been within the contemplation of the Respondent.

The Applicant's evidence shows a Craigslist ad for the property posted on May 14, 2021 showing the property was available for June 1, 2021 and set rent at \$4,000.00. The Applicant's evidence also includes a copy of an email dated May 30, 2021, which the Applicant says was between a friend of hers enquiring whether the property was still available for rent. The response provided indicates that the property was still available for rent at that time and that viewings for prospective tenants were being scheduled for June 1<sup>st</sup>.

The Respondent provides written submissions in which it was argued that an assistant at the office posted the ad without consulting with the owner. The Applicant argued the employee should be seen as acting on behalf of her employer.

### Analysis

The Applicant seeks compensation equivalent to 12 times the monthly rent payable under the tenancy agreement.

Pursuant to s. 51(2) of the *Act*, a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement when a notice to end tenancy has been issued under s. 49 and the landlord or the purchaser who asked the landlord to issue the notice, as applicable under the circumstances, does not establish:

- that the purpose stated within the notice was accomplished in a reasonable time after the effective date of the notice; and
- has been used for the stated purpose for at least 6 months.

I have turned my mind toward who should be named as the respondent. There is no dispute that the Buyers' Notice was signed by the Respondent, the Two-Month Notice lists the Respondent as the purchaser, and the tenancy ended on May 30, 2021 when vacant possession was rendered, which is prior to the second assignment of May 31, 2021 where J.P.Z. took on the role as the purchaser. Though the Respondent never took ownership of the property, I find that that is not relevant. The tenancy ended pursuant to the Respondent's request, that at all material times to this dispute it was fact the purchaser and assigned its role to the shareholder's son after the tenancy ended. It is no different than a had the Respondent took ownership and sold it to someone else the day after the tenancy ended. From the Applicant tenant's perspective, J.P.Z. is a mere stranger to the Two-Month Notice and the second assignment is incidental to why the Two-Month Notice was served and the tenancy ended. I find that the Respondent is properly named by the Applicant in this matter.

In this instance, there is no dispute that the Respondent's shareholder did not move into the rental unit. Indeed, the Respondent took the added step of assigning the purchase contract to the shareholder's son on May 31, 2021, the day after the tenancy ended. Once more, it is further beyond dispute that the residential property was rented to new tenants within the 6-month window in which it ought to have been occupied by the shareholder. I have little difficulty finding that the Respondent failed to fulfill the stated purpose within the Two-Month Notice of having its shareholder move into the property, rather it assigned the property to someone else.

The Respondent's agent argued that the pandemic and life changes necessitated the transfer to the son's name. Pursuant to s. 52(3) of the *Act*, a landlord may be excused of a compensation claim under s. 51(2) if there are extenuating circumstances which prevent the landlord from carrying out the stated purpose set out under the notice issued under s. 49.

Policy Guideline #50 provides guidance with respect to compensation claims advanced under s. 51 of the *Act* and states the following with respect to extenuating circumstances:

These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal, but did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.
- A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.
- A landlord entered into a fixed term tenancy agreement before section 51.1 came into force and they never intended, in good faith, to occupy the rental unit because they did not believe there would be financial consequences for doing so.

The guidance within Policy Guideline #50 is clear that demonstrating extenuating circumstances is a high threshold. It is insufficient to say that plans changed, and circumstances must be such that the stated purpose is no longer possible, with examples including the death of the individual to occupy the rental unit or the destruction of the rental unit in a natural disaster.

I find that the explanation provided by the Respondent, that being the pandemic and changing life plans, are not extenuating circumstances. The Respondent took over the purchase of the property on January 21, 2021 following the first assignment and signed Buyers' Notice the same day. The Two-Month Notice was issued the following day. When this all occurred, the pandemic and its associate restrictions had been in full swing for nearly one year. Far from being unanticipated, the pandemic was well within the consideration of the Respondent and its shareholder when the first assignment and Buyers' Notice were signed on January 21, 2021. There is no suggestion that the residential property was destroyed or the shareholder otherwise incapable of occupying the property other than a change of plans, which are not extenuating circumstances.

I find that the Applicant is entitled to compensation pursuant to s. 51(2) of the *Act* equivalent to 12 times the rent payable under the tenancy agreement, which in these circumstances is \$30,000.00 (\$2,500.00 x 12).

### Conclusion

The Applicant is entitled to compensation under s. 51(2) of the *Act* of \$30,000.00.

The Applicant was successful under the circumstance. I find that she is entitled to the return of her filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Respondent pay the Applicant's \$100.00 filing fee.

It is the Applicant's responsibility to serve the Respondent with the monetary order. If the Respondent does not comply with the monetary order, it may be filed by the Applicant with 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 20, 2022

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Residential Tenancy Branch