



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on December 6, 2022. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51

Both parties attended the hearing and provided affirmed testimony. The Landlord's wife (referred to as the Landlord) was present at the hearing and confirmed receipt of the Tenant's Notice of Dispute Resolution Proceeding and evidence package and no issue was raised with service of this package. I find the Tenant sufficiently served the Landlord with this package. The Landlord provided mail tracking information to show they sent their package to the Tenants on November 27, 2022. As stated in the hearing, and as I specifically stated in my interim decision from October 3, 2022, the Landlord was required to ensure the Tenant's received her evidence package no later than 7 days before the hearing. As this was not done, and with no explanation as to why it was not done, I find the Landlord's evidence is inadmissible, as it has not been served in accordance with the Rules or my Interim Decision. Section 90 of the Act specifies that documents sent by mail are not deemed served until 5 days after they were mailed. This is well after the allowable window for serving evidence. The Landlord provided testimony only.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, not all details of the statements and evidence will be reproduced here and only the

evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under section 51 of the Act?

### Background and Evidence

The Tenant stated that they paid \$800.00 per month in rent. The Tenant stated she received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) in April of 2021, and moved out early on or around May 15, 2021. The effective date of the Notice was June 30, 2021. The Tenant provided a copy of the Notice into evidence, and it indicates the following ground as a reason to end the tenancy:

- *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 Tenant provided a detailed synopsis of what occurred following the issuance of the Notice in her evidence package. In summary, the Tenant asserts that the Landlord, nor close family, ever occupied the rental unit. The Tenant stated that on June 3, 2021, she noticed an ad get posted on Facebook for the re-rental of the suite for an extra \$200.00 on top of what they were paying. The Tenant provided copies of the ad, as well as communications she had with the Landlord's wife about it being available for rent. The Tenant stated that the rental listing was listed as "rented" only a few days after it was posted, and the Tenant confirmed, via text message with the Tenant who still lived upstairs, that the person who rented this rental unit was not related to the Landlord, and that he was moving in June 15, 2021.

The Landlord's wife acknowledged that neither she, nor her husband, or either of their families moved into the rental unit. The Landlord's wife stated that their plan when they bought the house in the spring of 2021, was to have her parents move from India, to live in the basement suite. Then, once the tenant in upper unit of the house finished her fixed term tenancy in November 2021, she and her husband (the Landlord) would move in upstairs. However, the Landlord's wife stated that her father died in May of 2021, and she decided to re-rent the unit on Facebook to another unrelated party. The Landlord's wife confirmed that he re-rented the unit as of June 15, 2021.

## Analysis

With respect to the Tenant's request to obtain 12 months' worth of rent as compensation based on the Notice, pursuant to section 51 of the Act, I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

### *ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENOVATIONS AND REPAIRS*

*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).*

*A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:*

- accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.*

*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.*

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

As noted above, the onus is on the Landlord to demonstrate that he accomplished the stated purpose for ending the tenancy, as laid out on the Notice or that they have an extenuating circumstance. The Landlord selected the following ground:

- 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.*

I turn to the following portion of the Act:

***Tenant's compensation: section 49 notice***

***51 (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***

***(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.***

***(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 the case may be, from***

***(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or***

***(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.***

In this case, I note the onus is on the Landlord to prove that they accomplished the stated purpose on the Notice. I note the Landlord's wife acknowledged that they re-rented the unit, as of June 15, 2021, to an unrelated party through an ad on Facebook.

As a result, I find the Landlord breached section 51(2) of the Act and failed to move in (or have close family move in) for at least 6 months starting within a reasonable period after the effective date of the Notice. This typically entitles the Tenant to compensation. However, the issue now becomes whether or not the Landlord has sufficiently demonstrated that there were extenuating circumstances such that they should be

excused from accomplishing the stated purpose on the Notice and from paying the Tenant compensation.

***Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy states as follows:***

*An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:*

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before 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 didn't notify the landlord of any further change of address or contact information after they moved out.*

*The following are probably not extenuating circumstances:*

- A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations*

The Landlord's wife indicated that her plan was to have her father and mother move from India, into the basement suite. However, she stated that this plan was changed when her father died in May of 2021. I acknowledge what the Landlord's wife has stated on this matter. However, I note she has provided no documentary evidence to corroborate that her father passed away, or that her parents had formalized any plans to move in. Given the lack of documentary evidence substantiating that the Landlord's wife's father passed away, I find there is insufficient evidence showing there were any "extenuating circumstances", such that it would be unreasonable or unjust for the Landlord to pay the compensation.

I award the Tenant \$9,600.00, pursuant to section 51(2) of the Act, which is 12 times rent of \$800.00. I also award the \$100.00 filing fee.

Conclusion

I grant the Tenant a monetary order in the amount of \$9,700.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 7, 2022

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Residential Tenancy Branch