



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

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

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

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the tenant's application and respective evidence submissions on file.

### **Issues**

Is the tenant entitled to a monetary order for compensation relating to a Notice to End Tenancy for Landlord's Use of Property?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### **Background & Evidence**

This tenancy for this basement unit began on November 15, 2016. The monthly rent prior to the end of the tenancy was \$1158.00. The tenancy was with the previous owners of the property. The respondent in this application is the purchasing landlord.

On November 26, 2020, the previous owners served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), pursuant to section 49 of the Act, with an effective date of February 28, 2021. The notice was issued on the grounds that the landlord entered into an agreement in good faith to sell the unit; all the conditions of the sale have been satisfied; and, the purchaser, or a close family member of the purchaser, intends in good faith to occupy

the rental unit. The tenant submitted a copy of the buyer notice to seller requesting vacant possession for their own use.

The tenant vacated the rental unit on February 28, 2021, as per the effective date of the Notice.

The tenant is claiming an amount equivalent of twelve times the monthly rent as compensation due to the purchaser not using the rental property for his own use after issuing the Two Month Notice.

The tenant testified that the respondent did not act in good faith and never moved into the unit. The tenant testified that rather the unit was advertised for rent prior to her vacating and then again after she vacated. In support of her claim the tenant submitted copies of advertisements for the rental unit. The tenant submits the unit was re-rented on May 16, 2021, only 2 ½ months after she vacated.

The respondent testified that during the relevant time, he and his wife were expecting their first child, so they purchased the new house for the extra space. His parents are Indian residents with a multiple entry visa and they were planning to come to Canada and stay for one year during and after the birth of their grandchild. The basement unit of the newly purchased home was going to be occupied by his parents. The plan was to re-rent the unit after one year once his parents returned to India. The respondent submits that he only posted rental advertisements just so he would know the going rate for the following year. The respondent submits that due to Covid-19 restrictions his parents were never able to travel to Canada due to the extended flight bans. Finally after turning down many inquiries from prospective tenants, he gave in and leased the unit in May 2021 as it was getting close to the birth of their child and he knew his parents were not going to be able to come.

### Analysis

Section 51 (2) of the Act provides that if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement. The onus is on the landlord to establish that the stated purpose for ending the tenancy was accomplished.

Pursuant to section 51(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 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.

There was no dispute that the respondent did not accomplish the stated purpose for ending the tenancy after the effective date of the Two Month Notice. I find the argument put forward by the respondent as to why he was not able to accomplish the stated purpose for ending the tenancy is not an extenuating circumstance. It was the respondent's choice to serve the Two Month Notice hastily before any concrete plans were in place for his parents to travel to Canada. The respondent provided no information to support whether or not his parents had purchased tickets to travel or information on the dates of travel ban impacting their arrival. I note, the respondent issued the Two Month Notice during the Covid-19 pandemic so even if there were a travel ban at the relevant time, the respondent could have done his due diligence before requiring the tenant to vacate the rental unit.

I allow the tenant's claim and award an amount of \$13,996.00, which is twelve times the monthly rent of \$1158.00 plus the \$100.00 filing fee.

### Conclusion

Pursuant to section 51 of the *Act*, I grant the tenant a Monetary Order in the amount of \$13,996.00. 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: January 23, 2023

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Residential Tenancy Branch