



# 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 (“Application”) filed by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) in which the Tenant seeks:

- compensation from the Landlord related to a Notice to End Tenancy for Landlord’s Use of Property dated July 2, 2021 (the “2 Month Notice”) pursuant to section 51(2); and
- authorization to recover the filing fee of the Application from the Landlord pursuant to section 72.

The original hearing of the Application was held on July 25, , 2022 (“Original Hearing”). The Landlord, the Landlord’s advocates (“JM” and “PM”) and the Tenant attended the Original Hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (“RoP”). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Pursuant to Rule 7.8 of the RoP, I adjourned the Original Hearing and issued a decision dated July 25, 2022 (“Interim Decision”). The Interim Decision stated the Tenant was to re-reserve the evidence she submitted to the Residential Tenancy Branch (“RTB”) for the Original Hearing on the Landlord. The Interim Decision also allowed the Landlord to serve on the Tenant, and submit to the RTB, any evidence he thought was relevant to respond to the Tenant’s Application and evidence. The Interim Decision and Notices of Dispute Resolution for the adjourned hearing, scheduled for December 9, 2022 (“Adjourned Hearing”), were served on the parties by the RTB.

The Landlord, JM, PM and the Tenant attended the Adjourned Hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

#### Preliminary Matter – Service of NDRP Package and Tenant’s Evidence on Landlord

At the Original Hearing, The Tenant stated she served the Notice of Dispute Resolution Proceeding (“NDRP”) on the Landlord by registered mail on December 24, 2021. The Tenant provided a copy of the Canada Post tracking number and stated the envelope was returned to her on the basis that it had not been picked up. JM denied the Landlord received the NDRP. I looked up the tracking number provided by the Tenant and found that it was inconclusive.

JM stated the Landlord received an envelope on his doorstep on July 7, 2022 that contained a USB stick. JM stated that the Landlord was unable to open most of the documents on the USB stick but presumed it had something to do with the Tenant. JM stated a call was made to the Residential Tenancy Branch (“RTB”) and a courtesy copy of the NDRP was provided to the Landlord.

#### Preliminary Matter – Service of Landlord’s Evidence on Tenant

At the Original Hearing, JM stated the Landlord attempted to serve the Tenant with his evidence by a process server. The Tenant acknowledged she received the Landlord’s evidence. I find the Landlord’s evidence was served on the Tenant in accordance with the provisions of section 88 of the Act.

#### Issues to be Decided

Is the Tenant entitled to:

- compensation from the Landlord in relation to the 2 Month Notice?
- recover the filing fee for the Application from the Landlord?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The parties agreed the tenancy commenced on or about May 2019, on a month-to-month basis, with rent of \$1,200.00 payable on the 1<sup>st</sup> day of each month. The Tenant was required to pay a security deposit of \$600.00 that was returned to the Tenant after the tenancy ended. The parties agreed the Tenant was paying \$1,100.00 per month when the tenancy ended. Based on the testimony of the parties, I find there was a residential tenancy between the parties and that I have jurisdiction to hear the Application.

The Tenant submitted into evidence a copy of the 2 Month Notice that was served on her by the Landlord. The 2 Month Notice stated the effective date for the Tenant to move out was July 15, 2021. The parties agreed the Tenant vacated the rental unit on August 1, 2021. The 2 Month Notice stated the reason for ending the tenancy was because:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child or the parent or child of that individual's spouse)

The Tenant stated the Landlord did not use the rental unit for the purposes stated in the 2 Month Notice. The Tenant stated JM was living upstairs in the residential property before the Tenant vacated the rental unit. The Tenant stated she found an advertisement for rental unit for rent on Craigslist in September 2021. The Tenant submitted into evidence a video that shows the advertisement for renting the rental unit at \$1,300.00 per month. JM admitted the advertisement on Craigslist was placed by the Landlord.

JM stated she is a child of the Landlord and that she was going to move into the rental unit after the Tenant moved out of it. JM stated some work was done on the rental unit after the Tenant moved out. JM stated out but she never actually moved into the rental unit or occupied it for six months after the effective date of the 2 Month Notice.

## Analysis

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. When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the standard of proof.

The Tenant seeks \$13,200.00 in compensation pursuant to section 51(2) of the Act on the basis the Landlord failed to use the rental unit for the stated purpose in the 2 Month Notice. The 2 Month Notice was issued pursuant to subsection 49(2)(a) and section 49(3) of the Act that state:

- 49(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy
  - (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
    - (i) not earlier than 2 months after the date the tenant receives the notice,
    - (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
    - (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or
- [...]
- (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49(1) of the Act defines close family member as:

- "close family member" means, in relation to an individual,
- (a) the individual's parent, spouse or child, or
  - (b) the parent or child of that individual's spouse;

Sections 51(2) and 51(3) of the Act which state:

- 51(2) Subject to subsection (3), the landlord...must pay the tenant...an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement *if the landlord...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...from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord...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.

[emphasis in italics added]

The 2 Month Notice stated the reason for ending the tenancy was because the rental unit would be occupied by the landlord or the landlord's close family member. Although the effective date of the 2 Month Notice was less than the time provided for by section 49(2)(a) of the Act, the Tenant nevertheless vacated the rental unit on July 1, 2021.

Section 51(3)(b) states the Landlord must pay the Tenant compensation that is equivalent to 12 months rent if the Landlord does not use the rental unit for the purpose stated in the 2 Month Notice.

JM stated she is a child of the Landlord and that she was going to move into the rental unit after the Tenant moved out of it. JM stated some work was done on the rental unit after the Tenant moved out. JM stated out but she never actually moved into the rental unit or occupied it for six months. The Tenant stated she found the rental unit was advertised for rent on Craigslist in September 2021, being less than 6 months after the effective date of the 2 Month Notice. The Tenant submitted a video that shows the

advertisement for renting the rental unit at \$1,300.00 per month, being \$200.00 more per month than the Tenant was paying when she vacated it. JM admitted the advertisement on Craigslist was placed by the Landlord.

*Residential Tenancy Policy Guideline 50* ("PG 50") addresses the requirements for a landlord to pay compensation to a tenant under the Act when a landlord or purchaser, as applicable, has not accomplished the stated purpose for ending the tenancy within a reasonable period or fails to use the rental unit for the purpose for which the notice was given. Part E of PG 50 addresses when a landlord may be excused from paying compensation in extenuating circumstances and it states:

#### **E. EXTENUATING CIRCUMSTANCES**

An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements. *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. 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.

[emphasis in italics added]

Pursuant to section 51(3) of the Act, the Landlord now have the burden of proving, on a balance of probabilities, that they are excused from paying the amount required under section 51(2) of the Act, on the basis there were extenuating circumstances that prevented the Landlord or a close family member from moving into the rent within a reasonable period of time after the effective date of the 2 Month Notice and occupying it for a minimum period of 6 months. JM did not provide any testimony or evidence that there were extenuating circumstances for the Landlord, or a close family member of the Landlord or the Landlord's spouse, not using the rental unit for the purpose stated in the 2 Month Notice. As such, I find the Landlord has not in my opinion satisfied the burden of proving, on a balance of probabilities, that there were extenuating circumstances that excuse the Landlord from paying the Tenant the amount required under section 51(2) of the Act. Based on the above, I order the Landlord to pay the Tenant compensation that is equivalent to 12 times the monthly rent of \$1,100.00 the Tenant was paying the Landlord at the time she vacated the rental unit, being \$13,200.00.

As the Tenant have been successful in the Application, I order the Landlord to pay the Tenant \$100.00 to reimburse her for the filing fee for the Application pursuant to section 72 of the Act.

### Conclusion

The Tenant is granted a Monetary Order for \$13,300.00 calculated as follows:

Item	Amount
Compensation equal to 12 Months' Rent (12 x \$1,100.00)	\$13,200.00
Reimbursement of Filing Fee for Application	\$100.00
<b>TOTAL</b>	<b>\$13, 300.00</b>

The Tenant is provided with this Order on 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 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 8, 2023

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Residential Tenancy Branch