



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes** MNRT, MNDCT / OPL, MNRL, MNDCL

### **Introduction**

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s application for:

- an order of possession for the landlord’s use of the residential property pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$8,900 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant’s application for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$20,000 pursuant to section 67.

This matter was reconvened from a prior hearing of the tenant’s application on December 22, 2022. I issued an interim decision setting out the reasons for the adjournment on that same day (the “**Interim Decision**”). This decision should be read in conjunction with Interim Decision.

### **Preliminary Issue – Attendance and Disposition of Tenant’s Application**

The tenant attended the hearing. The landlord was represented by its sole shareholder (“**DC**”). At the outset of the hearing, the tenant stated that he was on his way to the hospital to deal with a family medical emergency and that he wanted to withdraw his application. I advised him that I would dismiss his application, if he wanted, but stated that I would also consider granting an adjournment of both applications so he could attend to his family’s medical issues.

The tenant stated that he did not want an adjournment, and that he wanted to put this dispute behind him. I advised him that while I would dismiss his application, if he wanted, this would have no effect on the landlord’s application, which would proceed unless it was adjourned. I asked the tenant if he would like to request an adjournment. He declined. He stated that he was content to abide by any judgment I issued in his absence. I told him that if the landlord’s application was not adjourned, and if he disconnected from the hearing, he would not have an opportunity to make submissions

or otherwise respond to the landlord's application. The tenant testified that he understood.

Accordingly, I dismissed the tenant's application, without leave to reapply and proceeded to hear the landlord's application.

The tenant disconnected from the teleconference hearing.

DC stated that he served the tenant with the landlord's documentary evidence and amendment to this application (increasing the amount of the landlord's monetary claim via email (as permitted in the Interim Decision).

DC also stated that the tenant vacated the rental unit on December 3, 2022, so the landlord no longer required an order of possession. Accordingly, I dismiss this portion of the landlord's application.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) a monetary order for \$8,900; and
- 2) recover the filing fee;

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of DC, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The rental unit is a two-storey, single-detached home. The landlord, the tenant, and a third party entered into a written, fixed term tenancy agreement starting August 1, 2019 and ending July 31, 2021. On July 23, 2020, the third party vacated the rental unit, and all three parties signed an addendum removing the third party from the tenancy agreement. Monthly rent was \$2,100. The tenant did not pay the landlord any security or pet damage deposit.

The landlord is a family corporation (as defined by the Act) whose sole shareholder is DC.

On July 22, 2022, the landlord served the tenant with a two month notice to end tenancy for landlord's use (the "**Notice**"). It specified the reason for ending the tenancy as the landlord would be moving into the rental unit. The effective date of the Notice was September 30, 2022. At the hearing, DC clarified that the landlord was a family corporation, and that he, the sole owner of the landlord, and his daughter, were planning on moving into the rental unit. He would occupy the upper floor, and she the lower floor.

The tenant did not dispute the Notice.

DC testified that he organized his affairs on the understanding that he would be able to move into the rental unit on September 30, 2022. However, as stated above, the tenant did not move out of the rental unit until December 3, 2022. He did not pay any rent for December 2022. The landlord seeks compensation for this amount.

Accordingly, DC testified that he, in his personal capacity, had to rent another rental unit to stay in for October and November 2022, at a cost of \$2,500 per month. He submitted a copy of a tenancy agreement between himself and the landlord supporting this. He also submitted a letter from a real estate appraiser which stated that the market rate for the unit DC rented from the landlord was between \$2,500 and \$2,600 per month. DC testified that he paid the landlord the full amount of rent due under the tenancy agreement.

DC stated he obtained this appraisal, and had the landlord charge him rent on the lower end of the spectrum, in order to demonstrate that he had not artificially inflated the rent the landlord was charging him and to avoid any impression of self-dealing or impropriety. He stated that the unit he rented was supposed to be rented out to another family, but the landlord had to cancel that agreement so DC could move in. He testified that this family was also going to pay monthly rent of \$2,500.

DC testified that his daughter was able to stay in her existing rental unit past September 30. She paid \$1,800 per month in rent, but sublet a room for \$900. DC's daughter had to give one month's notice before vacating this unit, so DC stated that she paid an additional \$2,700 in monthly rent that she would not have otherwise paid (rent for October, November, and December, 2022) due to the tenant not moving out on the effective date of the Notice. He testified that his daughter started moving into the rental unit in January 2023.

DC testified that, when his daughter would move into the rental unit, she would be obligated to pay the landlord \$2,000 per month in rent.

The landlord seeks reimbursement of the rent DC and his daughter paid between September and December 2022. DC argued that they would not have had to bear this expense had the tenant moved out on the effective date of the Notice.

I asked DC if this claim amount to a loss suffered by *the landlord*, as opposed to loss suffered by himself and his daughter in their personal capacities. He argued that the landlord should be entitled to compensation for the tenant not vacating a rental unit in accordance with the Notice, as the Act provides compensation to a tenant if a landlord does not occupy a rental unit in accordance with a two month notice to end tenancy.

## **Analysis**

### **1. December Rent**

I accept DC's undisputed testimony that the tenant did not pay any rent for the month of December 2022. The Notice specified an effective date of September 30, 2022. As the tenant did not dispute the Notice, I find that the tenancy ended on this date. Pursuant to section 57 of the Act, the tenant was an "overholding tenant" from October 1 to December 3, 2022. Per section 57(3) of the Act, the landlord is entitled to recover rent on a *pro rata* basis for this time. This means the landlord is only entitled to recover \$203.22 ( $\$2,100 / 31 \text{ days} = \$67.74/\text{day}$  ;  $\$67.74/\text{day} \times 3 \text{ days} = \$203.22$ ).

However, I accept DC testimony that his daughter would have been living in the rental unit in December 2022 and would have been paying \$2,000 in monthly rent to the landlord. I accept that she was not able to move into the rental unit immediately after the tenant vacated, as she needed to give one month's notice at her previous unit.

Accordingly, due to the tenant's failure to vacate the rental unit on the effective date of the Notice, the landlord was prevented from generating \$2,000 from the rental unit (the amount DC's daughter would have paid had she been living there).

As this amount is greater than the amount the landlord would generate from the tenant's overholding, I order the tenant to pay the landlord \$2,000.

### **2. DC and DC's Daughter's rent payment**

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

(the "**Four-Part Test**")

Based on the evidence presented at the hearing, I find that the landlord has failed to establish it is more likely than not that it has suffered any loss as a result of any breach of the tenant.

The landlord seeks to recover the amount DC's daughter paid her prior landlord and that DC paid the landlord due to the tenant not vacating the rental unit on the effective date of the Notice.

The tenant breached the Act by failing to vacate the rental unit by the effective date of the Notice (September 30, 2022), as the tenancy ended on that date by operation of section 49(9) of the Act.

However, I am not satisfied that the landlord has suffered any monetary loss as the result of this breach. The tenant paid rent for October and November 2022. The landlord generated the same amount of rent from the unit that DC moved into when he discovered he was unable to move into the rental unit as it would have had that unit been rented to another party (that is, DC paid the landlord the same amount for use of the unit as the intended tenant would have).

There are no other financial consequences of the tenant's breach on the landlord.

I accept that DC and DC's daughter were both affected by the tenant's breach: DC had to pay out of pocket for a place to live and DC's daughter had to continue to reside at her prior unit. However, these are not consequences suffered by *the landlord*. Additionally, I cannot see how DC's daughter suffered any financial hardship whatsoever as a result of the tenant's breach, as, had she moved into the rental unit in October 2022, she would have been paying *more* in monthly rent.

In any event, I do not find the landlord, a corporate entity, is entitled to recover damages suffered by its sole shareholder or his daughter. While these individuals may have suffered loss in their personal capacities, that loss does not confer an entitlement to recovery to the landlord.

I am not persuaded by DC's submissions that there ought to be a symmetry of consequence between landlords and tenants when they do not comply with a notice to end tenancy issued pursuant to section 49 of the Act. The consequences to a landlord for failing to use a rental unit for the purpose stated on a notice to end tenancy are established by section 51(2) of the Act. There is no similar section for tenants. I do not have the statutory authority to create such a provision.

As such, I cannot grant the relief sought by the landlord. I do not find that, aside from the loss of the ability to generate rent from the rental unit for December 2022, it suffered any the loss as the result of the tenant's failure to vacate the rental unit on September 30, 2022.

**Conclusion**

Pursuant to section 67 of the Act, I order that the tenant pay the landlord \$2,000, representing the loss of income for December 2022.

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 25, 2023

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Residential Tenancy Branch