



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

The former Tenants (hereinafter the “Tenant”) filed an Application for Dispute Resolution on May 16, 2022 seeking compensation for the end of the tenancy, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on January 31, 2023.

Both the Tenant and the Purchaser of the rental unit (the “Purchaser”) attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

### Preliminary Matter – service of evidence

At the outset of the hearing I reviewed each parties’ disclosure and service of evidence to the other.

The Purchaser confirmed they received the Notice of Dispute Resolution Proceeding from the Tenant via registered mail. They received document evidence in that package. Though the package contained a USB drive containing digital files, the Purchaser stated the files were “not accessible” and “corrupted.” The Landlord was not able to view or hear the files the Tenant forwarded to them in digital format.

The *Residential Tenancy Branch Rules of Procedure* contains special guidelines for a party’s reliance on digital evidence:

- 3.10.1: a party must include a description of the contents of digital files, and a statement as to the significance of each file, using the form as set in 3.10.4

- 3.10.5: before the hearing, the party providing digital evidence must confirm that the other party is able to gain access to the evidence, with attention to the set timeline

There is no evidence the Tenant undertook these extra measures to ensure their evidence was in a suitable format for use by the other party. Given the Purchaser stated they had no access to the digital files provided by the Tenant, I exclude the audio and video files from consideration.

The Tenant amended their Application on January 19, 2023. This was to change their address for service. Given this change occurred close to the hearing date of January 31, this was not disclosed to the Purchaser in a timely manner to allow for the Purchaser's service to the Tenant within seven days of the date of the hearing, as per Rule 3.15. The Landlord did not undertake to serve their evidence to the Tenant at that updated address.

The Purchaser relied on two key pieces of evidence that they disclosed to the tenancy branch on January 24, 2023. This is within the seven-day timeline as set out in Rule 3.15; however, I afforded the Purchaser the opportunity to address the issue in the hearing. Because of the Tenant's attendance in the hearing, and their full participation including the ability to question the Purchaser on these pieces, I allowed the Purchaser to send the two files directly to the Tenant during the scheduled hearing time. The Tenant confirmed they received these two attachments during the hearing.

I balance the Tenant's relatively late update of their address for service, along with the small size – *i.e.*, two single-page documents – of the evidence to find that the Tenant was not prejudiced by the service of the Purchaser's evidence to them in this manner. I find the Tenant has full knowledge of the Purchaser's evidence in this matter, and I give the Purchaser's evidence full consideration herein.

### Issues to be Decided

Is the Tenant entitled to monetary compensation for the Notice to End Tenancy for the landlord's Use of Property (the "Two-Month Notice"), pursuant to s. 51 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

### Background and Evidence

The Tenant provided a copy of what they labelled the most recent agreement. They confirmed in the hearing that they moved into the rental unit in 2019, with a starting rent at \$1,595. By the end of the tenancy, the rent had increased to \$1,618, and this amount forms the basis of their claim.

The Tenant moved out from the rental unit on March 1, 2022. This was after their former Landlord served the Two-Month Notice on January 31, 2022, setting the tenancy end-date on April 1, 2022. This was because the Purchaser had asked the former Landlord for vacant possession of the rental unit, where “All of the conditions for the sale of the rental unit have been satisfied.” The Two-Month Notice named the Purchaser, and a copy of the Purchaser’s written request was attached to the Two-Month Notice, and the Tenant provided that document in their evidence. The Tenant did not challenge the validity of this Two-Month Notice in a dispute resolution proceeding.

In the hearing, the Tenant presented that they “discovered someone else was renting out” at the rental unit. They had sent a package to their former rental unit address after moving out, in error, and when retrieving that package from their former address on May 9, 2022, they noticed people living there. They asked the person there if they were living there, and that person confirmed to the Tenant that they were renting.

According to the Tenant, the lower renter in the rental unit property was evicted at the same time. On the Tenant’s visit to their former rental unit, in discussion with the occupant, that occupant confirmed that other residents lived downstairs; these were also renters.

The Tenant’s claim for the amount of \$19,416 is the equivalent of 12 months value of the rent the Tenant was paying at the end of their tenancy, \$1,698.

In response to the Tenant’s Application and the Tenant’s description of the issue in the hearing, the Purchaser confirmed that things developed “not as anticipated.” The Purchaser’s parents was intending to travel to Canada to stay in the rental unit, departing from their home country on April 15. On April 3, that parent fell sick and complained about back pain, and was unable to walk. They were prescribed rest and physiotherapy. One the Purchaser’s parent became physically unfit, the Purchaser undertook to rent out the lower rental unit starting on May 1, 2022, in a month-by-month

arrangement with new tenants. The Landlord stated they had new tenants in the upper rental unit – *i.e.*, that former rental unit of the Tenant here – on May 9, 2022.

For evidence (and disclosed to the Tenant during the hearing time), the Purchaser provided the purchased flight itinerary for their parent that shows the scheduled flight for April 15, 2022. Also, a medical note dated January 15, 2023 sets out the Purchaser's parent's medical visit of April 3, 2022 in their home country. This was a "chief complaint of back pain and pain in both legs", being unable to walk. The doctor set out that they "advised physiotherapy and complete bed rest for one month and avoid the upstairs and travelling."

### Analysis

The *Act* s. 49 allows for a landlord to end a tenancy if they or a close family member intends in good faith to occupy the rental unit.

There is compensation awarded in the situation where a landlord issues a Two-Month Notice. This is covered in s. 51:

- (2) Subject to subsection (3) . . . the purchaser who asked the landlord to give the notice must pay the tenant . . . an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the . . . purchaser . . . 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 . . . 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 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 purchaser 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 for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The onus is on the Purchaser to prove that they accomplished the purpose for ending the tenancy or that they used the rental unit for its stated purpose for at least six

months. The Purchaser may be excused from the requirement to pay 12 times the amount of rent if they can prove extenuating circumstances.

I find the Purchaser did not accomplish the stated purpose for ending the tenancy within a reasonable period of time. This is plain in the evidence the parties' testimony, and the Purchaser confirmed they had new renters within the rental unit in May 2022.

The Purchaser's parent's plan for travel was interrupted on April 3 as shown in the medical note they provided. The physician prescribed rest and physiotherapy – and, more importantly, no travel, for a period of one month. I find there is no further explanation as to what occurred after the one-month timeframe. Exactly after one month, the Purchaser acquired new tenants in the rental unit.

I find the Purchaser did not provide sufficient explanation of what caused the parent's plans to shift more permanently by May 1<sup>st</sup>. There was no evidence of whether the parent had recovered enough to resume travel, in which case, their move to the rental unit could become finalized within a reasonable period of time in May. It is unknown if the parent's medical condition was altered permanently, causing them to abandon the plan for their move into the rental unit.

Given the insufficient evidence, I find there were no extenuating circumstances present, especially with regard to a consideration of the "reasonable period" factor. I find the parent's condition, as described, was non-permanent and there otherwise is no indication it was a serious condition causing the Purchaser to abandon their plan to have that parent occupy the rental unit.

I find the Purchaser has not overcome the burden of proof to show there were extenuating circumstances in place. I find the Purchaser must pay, as the *Act* delineates, the amount of 12 times the monthly rent to the Tenant. This is \$19,416.

Because they were not successful in their Application, I grant them reimbursement of the Application filing fee.

### Conclusion

Pursuant to s. 51 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$19,516. I provide the Tenant with this Monetary Order in the above terms, and they must serve it to the Purchaser as soon as possible. Should the Purchaser fail to comply

with this Monetary Order, the Tenant may file the Monetary Order with the Small Claims Division of the Provincial Court where it may 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 s. 9.1(1) of the *Act*.

Dated: February 16, 2023

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Residential Tenancy Branch