



# 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 concerning an application made by the tenant seeking compensation for the landlord's failure to comply with the *Residential Tenancy Act* or use the rental unit for the purpose stated in a Two Month Notice to End Tenancy for Landlord's Use of Property ; and to recover the filing fee from the landlord for the cost of the application.

The tenant was represented at the hearing by an agent, who gave affirmed testimony. The landlord also attended the hearing accompanied by an agent and a translator. The landlord and the landlord's agent each gave affirmed testimony, and the parties were given the opportunity to question each other. The landlord's translator was affirmed to well and truly interpret the proceedings from the English language to the landlord's Native language, and from the landlord's Native language to the English language to the best of the translator's skill and ability.

The parties agree that evidence has been exchanged, however some evidence was provided later than set out in the Rules of Procedure. The parties agree that all of the late evidence relates to a counter-claim made by the landlord, which is not before me.

The landlord advised that on January 31, 2023 the landlord made an application respecting damage to the rental unit, which is scheduled to be heard on October 23, 2023. The landlord requested that the landlord's application be heard with this application. The tenant did not agree to adjourn this hearing, and since the tenant filed this application on August 17, 2022 and the landlord filed several months later, I declined the request to join the hearings or adjourn this hearing. Therefore, I decline to consider any of the late evidence of either party. All other evidence has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the rental unit was used for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property, or established that extenuating circumstances existed preventing the landlord from accomplishing the stated purpose?

Background and Evidence

**The landlord's agent** (MK) testified that this fixed term tenancy began on March 1, 2017 and reverted to a month-to-month tenancy after February 28, 2018. Although the tenancy agreement, a copy of which has been provided for this hearing by the landlord, states that at the end of the fixed term the tenant must vacate the rental unit, the tenancy continued on a month-to-month basis until the end of May, 2022 when the tenant vacated the rental unit. Rent in the amount of \$4,500.00 was payable on the 1<sup>st</sup> day of each month, but was reduced by \$150.00 per month for repairs done by the tenant, and by consent. Anything over \$150.00 in a month would be paid for by the landlord and arranged by the landlord. That arrangement lasted for years from the beginning of the tenancy.

At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$2,250.00, all of which has been returned to the tenant, and no pet damage deposit had been collected.

The rental unit is a single family dwelling, and a move-in condition inspection report was completed at the beginning of the tenancy. A copy has been provided for this hearing. No move-out condition inspection report was completed. The landlord's agent testified that the rental unit was not in a good condition and was too much to repair.

The landlord received an end of tenancy proposal from a friend of the tenant, to end the tenancy. On April 28, 2022 the landlord served the tenant with a Two Month notice to End Tenancy for Landlord's Use of Property by email, and a copy has been provided by the tenant for this hearing. It is dated April 28, 2022 and contains an effective date of vacancy of June 30, 2022. The reason for issuing it states: 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), specifying the landlord or the landlord's spouse. The landlord's agent testified that the tenant agreed to move out on May 31, 2022.

The landlord moved in at the end of January, 2023 due to substantial damage which required minor repairs. The construction company made a proposal in June and work started in July, 2022. Then there was a “stop work order” made by the City on August 11, 2022, a copy of which has been provided for this hearing, requiring an inspector to confirm that the repairs were minor and once inspected he gave the okay to continue the work, on August 26, 2022. By then the construction company had other priorities and were not able to return until November.

Renovations continued on floors, walls and cabinets, which is still ongoing, but the contractor notified the landlord that the kitchen, bathroom and bedroom are finished, so the landlord could move in. Photographs have also been provided for this hearing. The tenant had removed the island in the kitchen. The flooring was quite damaged, scratched and stained, and replaced by the landlord. Wall repair was the biggest job.

There was a very good reason that the landlord needed to move into the rental home. The landlord had a property in another community which suffered very serious water damage in December, 2021; floors were damaged and ceilings collapsed, and the landlord had been staying with friend. Renovations are now complete on that property, which is now on the market for sale. No one lives there.

The landlord’s agent also testified that the rental unit was listed for sale in February, 2022 because the landlord wanted to sell it to buy a new house. Although the landlord’s agent is not certain of the sequence of events, the landlord was displaced from the other property.

The landlord returned the tenant’s security deposit, having no intention of claiming it from the tenant because the tenant didn’t have as much money as the landlord. The landlord also gave the tenant \$1,100.00 in compensation for not having an oven that worked, and the tenant said he understood that it was difficult to find one that would fit in the space, and thought it might be a fire hazard.

**The landlord** testified through the translator that the landlord wanted to sell the rental unit and buy a new one and in February, 2022 listed it for sale. The other property was damaged in December, 2021 and was under construction until July, 2022. The landlord lived with a friend and knew there was damage to the rental unit, so the landlord wanted to purchase something to avoid renovating. Due to the bad condition of the rental unit, it didn’t sell and was taken off the market after 1 month. At that time the landlord had no place to live, so had to renovate and move in.

The contract time between the landlord and the realtor ran from February 8 to September 30, 2022, but that does not mean it was on the market for sale; that was the listing contract only between the landlord and the realtor.

**The tenant's agent** testified that the landlord has not moved into the rental unit, and it was 8 months prior. The tenant lives across the street and has been watching. Blinds haven't been moved, lights are on 24 hours per day, homeless people are in the back, no cars are parked, and no garbage or recycling has been put out to the curb.

The tenant has also provided a letter dated January 26, 2022 from a person stated to live directly across the street from the rental unit, and that no one has been living at the property. The writer has seen workers come and go but no one living inside, shades are pulled 24 hours per day and there are never cars parked in the front or side of the house.

The tenant claims 12 times the monthly rent, or \$54,000.00 and recovery of the \$100.00 filing fee.

#### SUBMISSIONS OF THE LANDLORD'S AGENT:

The landlord moved in at the end of January, and did not re-rent, but had to renovate, which a landlord can do. Renovations are continuing. The rental home was not in good condition at the end of the tenancy.

#### SUBMISSIONS OF THE TENANT'S AGENT:

None.

#### Analysis

Where a tenant makes an application for compensation due to the landlord's failure to use the rental unit for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property, the onus is on the landlord to establish that the landlord did accomplish the stated purpose within a reasonable time after the effective date of the Notice, or the landlord must establish that extenuating circumstances existed to prevent the landlord from accomplishing the stated purpose within a reasonable time.

I agree with the landlord's agent that a landlord can renovate prior to moving in, there is nothing in law to prevent that.

I have reviewed all of the evidence, with the exception of the late evidence provided by the parties. The photographs provided by the tenant show a house that is in the

process of being renovated, and the tenant has provided a copy of a Legal Notice from the City dated August 11, 2022 stopping work for interior demolition without a permit and not in accordance with the Building Bylaw. It also states that no further work is to continue until approval obtained from the City Building Inspector.

The landlord has provided numerous photographs showing the condition of the rental unit at the beginning of the tenancy and that the rental unit was in need of repair after the tenancy had ended.

The landlord has also provided evidence of receiving a quote for flooring, painting, lights, switches, receptacles and bathroom and kitchen items dated June 28, 2022. The Stop Work order is dated August 11, 2022.

The landlord has also provided copies of MLS listings, the first one commencing on July 6, 2022 and expiring on September 14, 2022, and the second one commencing on September 13, 2022 and expiring on November 30, 2022. The notice to end the tenancy is dated April 28, 2022. I accept the landlord's undisputed testimony that the contract with the realtor was during those dates, however the landlord did not explain why it was re-listed.

The landlord has also provided a copy of a letter addressed to the landlord from a person on behalf of the tenant stating that the tenant considered disputing the Notice based on the fact that on April 26 he spoke to surveyors who indicated that the survey was being completed because the owner intends to tear down the home and build a new one.

The landlord's time-line document indicates that in August the tenant and his friend reported to the City that the renovation was in violation of the City's regulation, which is what prompted the Stop Work Order. It also states that once it was lifted, the landlord's contractors were unavailable to resume work until late October, further delaying the renovations. It also states that, "Due to the continued interferences by (the tenant) and his friend with the construction crew, (the landlord) was unable to move into her property in a timely manner."

After reviewing the photographs, I agree that the rental home required repairs or renovations. The landlord testified that she moved into the rental home in January, 2023. Although that may be a long time from the date the tenancy ended, I accept the undisputed evidence of the landlord that it was the tenant who caused the Stop Work Order and continued to interfere with contractors, preventing the landlord from moving in earlier.

The *Act* also specifies that:

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

**51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid.

(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 the landlord or purchaser, as applicable, 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 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 applicable, 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.

In this case, I am satisfied that the landlord has provided evidence sufficient in my opinion, that extenuating circumstances prevented the landlord from accomplishing the

stated purpose within a reasonable time after the effective date of the Notice, and I dismiss the tenant's application.

Since the tenant has not been successful with the application the tenant is not entitled to recovery of the filing fee from the landlord.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

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: February 23, 2023

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Residential Tenancy Branch