



# 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 as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for a monetary order in the amount of \$19,900 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement (12 month compensation pursuant to section 51(2) of the Act) and to recover the cost of the filing fee.

The tenant attended the teleconference hearing and was affirmed, the hearing process was explained, and the tenant was given an opportunity to ask questions about the hearing process. Thereafter the tenant was provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me.

I have reviewed all oral, documentary and digital evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence related to the facts and issues in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the Purchaser (herein referred to as the Purchaser) did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated June 8, 2022 (Notice of Hearing), application and documentary evidence (Hearing Packages) were considered. The tenant provided affirmed testimony that the Hearing Packages were both served on the Purchaser by registered mail. The first Hearing Package (Hearing Package 1) was mailed on June 10, 2022 address listed on the 2 Month Notice for the Purchaser and the registered mail tracking number is listed as RN 616 842 478 CA. The second Hearing Package (Hearing Package 2) was mailed on July 22, 2022 and the registered

mail tracking number is listed as RN 660 287 789 CA and was address to the rental unit address. According to the online Canada Post registered mail tracking website, both packages were marked as “unclaimed” and returned to the tenant sender.

Documents sent by registered mail are deemed served 5 days after mailing pursuant to section 90 of the Act. Given the above, I find that Hearing Package 1 was deemed served as of June 15, 2022 and that Hearing Package 2 was deemed served as of July 27, 2022. The hearing continued without the Purchaser present pursuant to section RTB Rule 7.3, which applies and states:

### **Rule 7.3 Consequences of not attending the hearing**

The arbitrator may conduct the hearing in the absence of a party or dismiss the application, with or without leave to re-apply.

Based on the above, I find this matter to be unopposed by the Purchaser.

### Preliminary and Procedural Matter

The tenant confirmed their email address during the hearing. The tenant confirmed their understanding that the decision would be emailed to them. The decision will be sent by regular mail to the Purchaser as the tenant did not have an email address for the landlord.

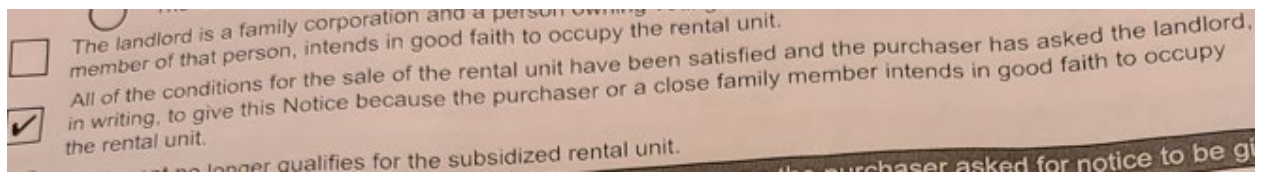
### Issues to be Decided

- Is the tenant entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?
- If yes, is the tenant also entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month-to-month tenancy began on June 12, 2021. Monthly rent was \$1,650 per month during the tenancy.

The 2 Month Notice was issued by request of the Purchaser with the following reason, which was not disputed by the tenant:



The tenant confirmed that they accepted the 2 Month Notice and vacated the rental unit by December 31, 2021. The effective date listed on the 2 Month Notice listed as December 31, 2021.

The tenant submitted colour photos which support that the Purchaser listed the rental unit for rent for an increased amount of \$1,950 per month as of January 2022, which is the following month the Purchaser was supposed to be occupying the rental unit. The colour photos support that the Purchaser listed the exact rental unit address and confirmed it was the "basement", which was the portion of the home being rented by the tenant before they were evicted by request of the Purchaser by the 2 Month Notice.

The tenant testified that they loved the rental unit and did not want to vacate and only did due to the 2 Month Notice and then the Purchaser just listed it for sale right away after I left.

### Analysis

Based on the undisputed documentary evidence of the tenant and the undisputed testimony of the tenant provided during the hearing, and on the balance of probabilities, I find the following.

**12 times the monthly rent** - Section 51(2) of the Act applies and states:

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

**51 (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.**

[emphasis added]

Based on the above, the Purchaser has the onus to provide sufficient evidence that they complied with the reason stated on the 2 Month Notice. As the Purchaser failed to attend the hearing to present any rebuttal evidence, I find the Purchaser has failed to meet the burden of proof and has also failed to provide any extenuating circumstances that I could consider under section 51(3) of the Act.

Therefore, as I find the Purchaser has failed to meet the burden of proof, I find the tenant is entitled to **\$19,800** in compensation from the Purchaser, comprised of 12 times the monthly rent of \$1,650 pursuant to section 51(2) of the Act. I find the testimony, 2 Month Notice and photos submitted in evidence support that the property was re-rented for \$1,950 or was at least advertised to be re-rented, contrary to the reason listed on the 2 Month Notice by the Purchaser, which would have prevented the Purchaser from re-renting for a minimum of 6 months after the effective vacancy date listed on the 2 Month Notice, December 31, 2021.

As the tenant's application was successful, I grant the tenant the recovery of the cost of the filing fee in the amount of **\$100** pursuant to section 72 of the Act.

I find the tenant has established a total monetary claim of **\$19,900** comprised of \$19,800 for 12 times the monthly rent for the Purchaser failing to comply with the reason stated on the 2 Month Notice and the \$100 filing fee.

### Conclusion

The tenant's application is fully successful.

The tenant has been granted a monetary order pursuant to section 67 of the Act, in the amount of \$19,900 as indicated above. This order must be served on the Purchaser and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to the tenant and sent by regular mail to the Purchaser. The monetary order will be emailed to the tenant only for service on the Purchaser.

The Purchaser is cautioned that they can be held liable for all costs related to enforcement of the monetary order in the Provincial Court, Small Claims Division, including court costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 7, 2023

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Residential Tenancy Branch