



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNETC

### Introduction

The Tenant filed an Application for Dispute Resolution on June 7, 2022 seeking an order for compensation related to the Landlord ending the tenancy for their own use of the rental unit. The Tenant filed a second Application for this same reason on June 16, 2022.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 21, 2023. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

The Tenant and the Landlord attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

### Preliminary Matter – Notices of Dispute Resolution Proceeding and disclosed evidence

The Tenant stated they did not serve the Notice of Dispute Resolution Proceeding associated with their June 7, 2022 Application to the Landlord. This was based on some discussion they had with the Landlord, and the Tenant understood that the Landlord would contact the Residential Tenancy Branch to explain the situation and request a cancellation of the Tenant’s June 7, 2022 Application.

The Landlord confirmed they did not receive the Notice of Dispute Resolution Proceeding associated with the Tenant’s June 7 Application from the Tenant. They were not aware of the specifics of the Tenant’s claim, and did not receive the associated evidence the Tenant provided to the Residential Tenancy Branch for this June 7 Application.

The Act s. 59(3) sets the duty for an applicant to provide the Notice of Dispute Resolution Proceeding for each Application to the Respondent. As each party confirmed in the hearing, I

find the Tenant did not serve the Notice of Dispute Resolution Proceeding for their June 7 Application. The Act s. 89 gives the rules for service of an application for dispute resolution. This is by leaving a copy with the person or their agent, or sending a copy via registered mail.

For this reason, I dismiss the Tenant's June 7 Application. This includes the Tenant's claim to the return of the security deposit withheld by the Landlord since the end of the tenancy. I dismiss this Application without leave to reapply because the Tenant repeated this Application on June 16, minus the specific claim to the security deposit. With this June 7 Application dismissed, I make no consideration of any evidence the Tenant provided to the Residential Tenancy Branch for this. The Tenant must file a separate application to resolve the matter of their security deposit that is still held by the Landlord.

The Tenant provided proof that they used registered mail to send the Notice of Dispute Resolution Proceeding for their June 16 Application to the Landlord. This was an image of the registered mail envelope, the receipt from the local post office dated June 22, and the registered mail label showing the tracking number. The Landlord confirmed they received this Notice of Dispute Resolution Proceeding, containing the important hearing information, from the Tenant.

The Tenant provided two images associated with the Landlord's use of the rental unit in the evidence. These they obtained from a third party who provided the images to the Tenant. The Tenant could not recall specifically disclosing these images to the Landlord; however, they provided these images to the Residential Tenancy Branch directly as evidence on September 7, 2022. I find the Tenant did not provide proof these disclosed these images to the Landlord as evidence for this hearing, as required. I give no consideration to these images as evidence in this hearing process for this reason.

#### Preliminary Matter – Landlord's evidence

The Landlord stated they served their evidence in this matter to the Tenant via registered mail. They provided a copy of a mail tracking number in the hearing. The Tenant stated they did not receive evidence from the Landlord.

There is no proof from the Landlord showing a clear record of what documentation they provided to the Tenant in the mail. There is also no record of the address used by the Landlord for this purpose. I grant no consideration of any documents provided by the Landlord as evidence for this purpose.

Presumably this was the same evidence the Landlord provided to the Residential Tenancy Branch on February 21, 2023, the scheduled date of the hearing. The Landlord also provided documents to the branch the day prior to the scheduled hearing. With reference to the Residential Tenancy Branch Rules of Procedure, in which Rule 3.15 sets that a respondent's evidence must be provided to the other party and the Residential Tenancy Branch "as soon as possible" and "not less than seven days before the hearing", I exclude this evidence from consideration.

In conclusion, there is no document evidence from either party in the record for this hearing. At the start of the hearing, I informed the parties that their testimony in the hearing is a form of evidence, and that I was recording all of that information.

#### Issue(s) 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*?

#### Background and Evidence

Both parties spoke to the basic terms of the tenancy agreement they had. The tenancy started on January 15, 2018, as the Tenant indicated on their June 16 Application. The Tenant paid \$1,200 at the start of the tenancy; however, by the end of the tenancy this amount had increased to \$1,240. This amount forms the basis for the Tenant's claim for a rent equivalent compensation.

In the hearing, both parties confirmed that the rental unit was a converted space in the Landlord's garage. There were two other rental units in the main house on the rental unit property, one upstairs and one downstairs. The Landlord confirmed they were living in the basement rental unit in that main house rental unit.

The Landlord ended this tenancy with the Two-Month Notice they served to the Tenant on February 1, 2022. This set the end-of-tenancy date for April 1, 2022, for the reason of the Landlord's own use of the rental unit. The Tenant moved out from the rental unit on March 25, 2022. The parties had some agreement involving a one-time payment of \$500 to the Tenant, along with free rent for either one or two months, depending on the timing of the Tenant's move out. The Landlord presented that the parties had a signed agreement for this purpose; however, the Tenant could not recall signing such a document and did not have a copy.

The Tenant presented that they periodically visited to the rental unit property after their move out in order to check for unforwarded mail sent to their former address. They remained in contact with another occupant at the rental unit property. The Tenant described hearing a baby crying from their former rental unit on one of these visits, and they were aware that the Landlord did not have a baby or younger child that would match to this crying.

As well, via text message, their friend who still lived at the rental unit property advised that new tenants had moved into the rental unit and were paying \$1,600 per month in rent. This was based on their friend's conversation with those supposed new tenants about their situation and move in to the rental unit.

In the hearing, under affirmed oath, the Landlord maintained that they continue occupancy of the rental unit. They did not rent to new tenants. They do have guests over to the rental unit property, and it is not uncommon for that converted garage space to be used as a gathering area. The Landlord lives with their family in the basement rental unit on the property, yet they continue to use the garage space for its purpose as a garage and not a living space.

### Analysis

Under s. 49(3) of the *Act* a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

A tenant's compensation in special circumstances is governed by section 51 which provides:

- (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
  - (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
  - (b) the rental unit is not 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, or
  - (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.

In order to make a finding of fact, and thereby determine an entitlement of compensation, I shall determine whether or not the Landlord took steps to accomplish the stated purpose for ending the tenancy. If the steps taken are not established in the evidence, I shall then determine whether extenuating circumstances prevented this. In each consideration, the burden of proof is on the Landlord to establish facts on a balance of probabilities.

I find the Landlord did not clearly indicate on the Two-Month Notice which family member would occupy the rental unit. That indication is blank on the Two-Month Notice; however, the validity of the end-of-tenancy document is not the subject of this hearing. As such, I find there was no indication that the Landlord, or any members of their family, would be moving into the rental unit which was a converted garage space. This non-indication on the document in a way supports the Landlord's explanation that there were no other occupants in that rental unit after the end of the tenancy.

The Landlord spoke to the matter directly in the hearing. They stated frankly that they do not occupy that rental unit. I find the Tenant's pretext for bringing this Application is their belief that the Landlord had re-rented the rental unit to new tenants. I give credence to the Landlord's direct testimony stating that they did not undertake to rent to new tenants.

What the Tenant presented, in comparison to the Landlord's direct testimony, was reference to their friend's observations and discussion with alleged new tenants living in the rental unit. This amounts to hearsay in the context of this hearing, without documented proof of their friend's direct observations or their friend's direct testimony in the hearing. I give more weight to the Landlord's account, as presented in the hearing and affirmed under oath, over this description from the Tenant who based their knowledge on input from their friend's observations.

Other than this, the Tenant presented that they overheard a child crying from within their former rental unit. The Tenant could not specify the date they heard that, or any other direct observation to confirm, definitively, that other tenants had taken up residence in that rental unit. Again, the Landlord provided direct testimony to say that their occupancy of that rental unit amounted to their use of that space – which consists of their garage – for their own purposes going forward after the end of the tenancy.

In sum, I find the Landlord undertook occupancy of the rental unit space – though not using it for their own actual living space, instead relegating its purpose to a garage space on the rental unit property – in line with the Two-Month Notice. As set out in s. 51(a), I find the Landlord has established that their stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the Two-Month Notice. There is thus no

entitlement of an amount in compensation to the Tenant, and I dismiss the Tenant's June 16 Application.

Conclusion

For the reasons above, I dismiss the Tenant's Application in its entirety and without leave to reapply.

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 21, 2023

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Residential Tenancy Branch