



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNETC, FF

### Introduction

This was the reconvened hearing dealing with the tenant's application for dispute resolution (application) under the Residential Tenancy Act (Act). The tenant applied for compensation from the purchaser/respondent related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice) and for recovery of the filing fee paid for this application.

This hearing began on November 15, 2022, and dealt with procedural and preliminary matters. An Interim Decision was entered on November 17, 2022, must be read in conjunction with this Decision and is incorporated herein by reference.

The tenant and the respondent attended the reconvened hearing. The original landlord was added as a party to this dispute by way of the Interim Decision; however, the original landlord did not attend, despite being served by the tenant with the Application for Dispute Resolution, evidence, Interim Decision and Notice of Hearing (application package).

The participants, at the reconvened hearing, were provided the opportunity to present further evidence orally and to refer to relevant documentary and digital evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) 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?

Background and Evidence

This tenancy began on September 1, 2020, and the tenant vacated the rental unit on August 31, 2021 in response to the 2 Month Notice. The monthly rent at the end of the tenancy was \$2,800.

The tenant's monetary claim is \$33,000, almost the equivalent of 12 times the monthly rent payable under the tenancy agreement of \$2,800. The tenant confirmed that the actual amount should have been \$33,600 and was not sure why he did not list the correct amount.

The subject of this dispute is a 2 Month Notice, dated April 21, 2021, with an effective date of August 31, 2021. The tenant confirmed he received the Notice by personal service from his landlord at the time. Filed in evidence were pages 1 and 2 of the Notice which listed the respondent as the purchaser.

The reason for ending the tenancy states that all the conditions for the sale of the property have been satisfied and the purchaser has asked the landlord in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

In his application, the tenant writes the following:

*Residence purchasing landlord (respondent name) has not moved into (\*\*\*\*) Drive in good faith to occupy the rental unit. Before we left (respondent first name) was doing work to turn the basement into a separate suite in order to have two rental units at (\*\*\*\*) Drive. We are entitled to compensation equal to one year's rent as stated in the tenancy agreement. Current Tenant: (\*\*\*) and 4 other UBCO students. Mobil Phone: (\*\*\*) \*\*\*-\*\*\*\*.*

[Reproduced as written except for anonymizing personal information to protect privacy]

In response to the tenant's claim, the respondent proceeded first in the hearing.

At the original hearing on November 15, 2022 and at the reconvened hearing, the respondent said they never asked that a 2 Month Notice be issued, rather they asked that a 4 Month Notice for renovations and repairs be given to the tenant. The respondent explained that was why the 2 Month Notice listed an effective move-out date 4 months after service. The intention was never to move into the rental unit and was always to make renovations to the residential property. As they have done everything required to meet the reasons listed on a 4 Month Notice, they have complied with that Notice, according to the respondent, and have done nothing wrong.

The respondent said there must have been a mistake made between the landlord and respondent's realtors handling the property purchase.

In response to my inquiry, the respondent indicated they did not know where the purchase contract documents were and did not remember his realtor's name. The landlord confirmed that the rental unit is being used to rent out individual rooms.

The tenant submitted that he contacted the landlord's realtor again, and filed a copy of the response. The real estate agent said they were not involved in the Notice that was given.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In the case before me, the undisputed evidence is that the tenant's landlord issued the tenant a 2 Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49(5) of the Act, for a final, effective move-out date of August 31, 2021. The tenant complied with the Notice and vacated by the effective date.

The landlord marked on the Notice that all the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this

Notice because the purchaser or close family member intend in good faith to occupy the rental unit. The respondent was listed on the Notice as the purchaser.

Tenancy Policy Guideline 50 (Guideline) states that the landlord, or where applicable, the purchaser has the burden to prove they accomplished the stated purpose within a reasonable period after the effective date of the notice.

Section 51(2) of the Act provides that the landlord or purchaser who asked the landlord to give the notice to end the tenancy, must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord, or purchaser, does not establish that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice and that 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.

In the matters before me, the respondent/purchaser confirmed that they did not move into, and occupy, the residential property as they always intended to make renovations to the residential property, which they have now done. The rental unit is being used to rent out individual rooms.

The respondent submitted that in the real estate transaction where they purchased the residential property, they requested a 4 Month Notice be issued to the tenant. Further the tenant was always aware renovations were going to be made. The respondent failed to submit a copy of what Notice they requested be issued and additionally, stated that they did not know where the contract documents were presently, despite being served the tenant's application on March 26, 2022. The respondent also said they did not remember their realtor's name.

As the burden of proof lies with the respondent in this case, I find the respondent submitted insufficient evidence to show that they requested a 4 Month Notice be issued rather than a 2 Month Notice. Extending the effective move-out date to 4 months after service does not make the 2 Month Notice a 4 Month Notice.

For the above reasons, I therefore find the purchaser must pay the tenant monetary compensation equivalent to 12 months' rent as the rental unit was not used for the stated purpose listed on the 2 Month Notice.

I further find I do not have to consider extenuating circumstances in this matter to excuse the purchaser from paying this amount, as I have found the purchaser presented none.

As a result, I grant the tenants a monetary award of **\$33,600**, which is the equivalent of monthly rent of \$2,800 for 12 months. I note that while the tenant made an error in calculating the monetary claim, which he listed as \$33,000, the Act is not discretionary, as the Act states the purchaser must pay the compensation equivalent to 12 months rent.

I find merit with the tenant's application and award him recovery of their filing fee of \$100, pursuant to section 72(1) of the Act.

As a result, I grant the tenant a monetary order (Order) of \$33,700, the equivalent of monthly rent of \$2,800 for 12 months, or \$33,600, and the cost of the filing fee of \$100.

Should the respondent fail to pay the tenant this amount without delay, the tenant must serve the Order on the respondent for enforcement purposes by means under section 88 of the Act. The respondent is cautioned that costs of such enforcement are recoverable from the respondent.

I note that although I made the tenant's original landlord, GM, a party to this dispute, I find it was not necessary to make any findings against him as I find the respondent had the burden of proof as the purchaser. GM is excluded from any further consideration in this matter.

### Conclusion

The tenant's application for monetary compensation for the equivalent of 12 months' rent, or \$33,600 and recovery of the filing fee is granted. The tenant has been granted a monetary order for \$33,700.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 17, 2023