



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNETC, FF

### Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice) and to recover the cost of the filing fee.

The tenant, the tenant's representative/agent, CL, and the landlord attended the hearing. The hearing process was explained, and they were given an opportunity to ask questions about the hearing process. The parties were affirmed.

Thereafter the parties were 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. The landlord said they did not receive the tenant's evidence, but did confirm that they received the tenant's application and dispute package with instructions. The tenant agreed that they did not serve the landlord with the WeChat messages or the rental advertisements. The landlord filed evidence, which was accepted.

I have reviewed all oral, written, and other 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 in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

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 and recovery of the cost of the filing fee?

Background and Evidence

The tenant submitted that the tenancy started on May 1, 2021, for a fixed-term through April 30, 2022, and ended on February 28, 2022, with the monthly rent being \$3,000. Filed in evidence was the written tenancy agreement.

The tenant's monetary claim is \$36,000, which is the equivalent of 12 times the monthly rent payable under the tenancy agreement, at \$3,000 per month.

The tenant wrote in their application the following:

*The landlord served the two-month notice to end tenancy to (tenant) on Jan 27 2022 saying the landlord will be moving back to use the property in May 2022. So (tenant) accepted the notice and moved out on April 30, 2022. However, (tenant) found out the landlord was still posting rental ads on the internet, WeChat, and other forms. The landlord immediately placed a new tenant on the property on May 1st, 2022. (Strata Form K supported) The landlord lied to (tenant) forced her to move out.*

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

The Notice received from the landlord was dated January 27, 2022, listing an effective move-out date of April 30, 2022. Filed in evidence was the 2 Month Notice.

The reason for ending the tenancy states that the rental unit will be occupied by the landlord or the landlord's spouse.

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

The landlord confirmed that they never moved into the rental unit after the tenancy ended and that it was re-rented, with the new tenants paying \$3,500 in monthly rent.

The landlord submitted that there were many reasons for not moving into the rental unit. The landlord submitted that the tenant moved out early, breaking the terms of the tenancy agreement, as they vacated on February 28, 2022, which caused a loss of rent.

The landlord submitted that there were unexpected and uncontrollable reasons for not moving into the rental unit. The landlord submitted that China was posting travel restrictions and that no one was allowed to travel, due to Covid.

The landlord submitted that their plan was to return to the local area to live, but the travel restrictions prevented their move. The landlord confirmed there is no evidence of the travel restrictions as China is strict about the media and usually news is passed on mouth-to-mouth.

In response, the tenant asserted that the landlord has not provided evidence to show they could not travel from China.

### Analysis

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

While I have reviewed the evidence submitted prior to the hearing and the oral evidence from the hearing, I refer to only the relevant evidence regarding the facts and issues in determining this Decision.

Under Tenancy Policy Guideline 2A, the onus is on the landlord to prove they accomplished the purpose for ending the tenancy under section 49 of the Act and that they used the rental unit for its stated purpose for at least 6 months.

The 2 Month Notice was given to the tenant listing that the landlord or landlord's spouse will occupy the rental unit.

Section 51(2) provides that if 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 if 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, the landlord must pay the tenant an amount equivalent of 12 times the monthly rent payable under the tenancy agreement.

As the landlord confirmed that they never moved into the rental unit and instead, advertised for new tenants for a higher monthly rent than the tenant was paying, I find the rental unit was not used for the stated purpose. I therefore find the landlord must pay the tenant the amount of \$36,000, the equivalent of 12 times the monthly rent at the end of the tenancy of \$3,000.

While the landlord claimed that the tenant breached the fixed-term by leaving earlier than April 30, 2022, that was not an issue before me in this dispute and was therefore, I find, not relevant to this dispute. The issue before me on the tenant's application was whether the landlord used the rental unit for the stated purpose or whether extenuating circumstances prevented them from doing so.

Section 51(3) of the Act authorizes me to excuse the landlord from paying the tenant the equivalent of 12 times the monthly rent if, in my opinion, extenuating circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or from 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.

Tenancy Policy Guideline 50E outlines circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.

- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.

In these circumstances, I find the landlord submitted insufficient evidence to show the matters could not be anticipated or were outside the landlord's control.

I find it is commonly known that the effects on world-wide travel restrictions due to Covid began in and around March 2020. The landlord submitted no evidence to show that the restrictions had increased or that the restrictions at the time prevented them from traveling to Canada from China during the relevant period, or from April 30, 2022, the effective move-out date on the 2 Month Notice.

For the above reasons, I therefore find the landlord submitted insufficient evidence of extenuating circumstances as contemplated by the Act and Tenancy Policy Guideline.

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

As a result, I grant the tenant a monetary award of \$36,000, which is the equivalent of the monthly rent of \$3,000 for 12 months.

I find merit with the tenant's application and award them 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 **\$36,100**, the equivalent of monthly rent of \$3,000 for 12 months, or \$36,000, and the cost of the filing fee of \$100.

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

### Conclusion

The tenant's application for monetary compensation for the equivalent of 12 months' rent in the amount of \$36,000 and recovery of the filing fee is granted. The tenant has been granted a monetary order for \$36,100.

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 09, 2023

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Residential Tenancy Branch