



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDCT

### Introduction

On July 18, 2022, the Tenants applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking compensation for money owed or damage or loss under the Act, Regulation, or tenancy agreement.

The matter was scheduled as a teleconference hearing. The Landlord and Tenants were present at the hearing. The Tenant was assisted by an advocate. At the start of the hearing, I introduced myself and the participants.

The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided.

- Are the Tenants entitled to money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

### Background and Evidence

The Tenant and Landlord testified that the tenancy began on August 1, 2019, on a month-to-month basis. Rent in the amount of \$850.00 was due to be paid to the Landlord by the first day of each month.

The Landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property dated November 27, 2021. ("the Two Month Notice"). The effective date of the Two Month Notice was December 31, 2021. The reason cited for ending the tenancy within the Two Month Notice is:

*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).*

The Tenants disputed the Two Month Notice and at a previous hearing an Arbitrator upheld the Notice and ended the tenancy by February 28, 2022. The Tenants provided a copy of the tenancy agreement and a copy of the Two Month Notice.

The Tenant testified that the Landlord's son never moved into the rental unit. She stated that she has been at Kings Court every week since she moved out to collect her mail and nobody moved into the rental unit. She stated that Mr. N.K. never moved in and the rental unit was completely empty. She stated that construction people were present and using the bathroom. She stated that she has friends living there who told her that nobody was living in the unit. The Tenant provided an unsigned letter dated August 10, 2022, from an anonymous person stating that the unit is unused since the Tenant moved out.

The Tenant is seeking compensation of \$10,200.00 which is twelve months of rent paid under the tenancy agreement.

In reply, the Landlord testified that Mr. N.K. did move into the rental unit in March of 2022. The Landlord provided a phone bill in support of their testimony. The Landlord stated that they had furniture moved into the unit during the first week of March 2022. The Landlord provided a copy of a signed letter from a furniture store stating that furniture bedding and appliances were delivered to the rental unit on the first week of March.

The Landlord presented a witness C.S. who stated that she applied for a job in April and met with N.K. for a job interview in April at the rental unit.

Mr. N.K. testified that he moved into the unit in March 2022, and moved out of the unit at the end of September 2022. He stated that he lived in the unit for 7 months.

The Landlord stated that the rental unit was re-rented to a new tenant as of October 1, 2022.

### Analysis

The parties are in agreement that the Landlord's agent issued the Tenants a Two Month Notice to End Tenancy for Landlord's Use of Property.

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

Residential Tenancy Policy Guideline # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser, or Close Family Member explains the concept of good faith and vacant possession as follows:

*"Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement..."*

Section 51 (2) of the Act provides that a landlord 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, as applicable, does not establish:

- (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.*

Residential Tenancy Policy Guideline # 50 Compensation for Ending a Tenancy provides:

*A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to*

*move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.*

Section 51.1(2) of the Act provides that 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 the case may be, 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.*

#### Compensation for Breach of Section 51

After considering the legislation and policy and the testimony and evidence before me, I make the following findings:

I find that tenancy ended on February 28, 2022. The burden of proof rests with the Landlord that he achieved the purpose of the Two Month Notice. The Landlord has persuaded me on a balance of probabilities that his son moved into the rental unit in March 2022. The Landlord provided documentary evidence and direct testimony from his son, and witness testimony that I accept as reliable evidence.

While I acknowledge that the letter provided by the Tenant, I note it is from an anonymous source and the author was not present to testify. I assign very little weight to this letter.

I find that the Landlord occupied the rental unit from March 2022 until the end of September 2022. I find that the Landlord occupied the rental unit for at least six months after the Tenant vacated.

Since I have found that the Landlord's son moved into the unit, and occupied it for at least six months, it is not necessary for me to consider whether or not there were

extenuating circumstances present that stopped the Landlord from accomplishing the purpose of the Notice.

The Tenant's application for money owed or compensation for damage or loss related to the Two Month Notice is dismissed without leave to reapply.

Conclusion

The Tenant was not successful with the application for money owed or compensation for damage or loss related to the Two Month Notice. The Landlord has persuaded me on a balance of probabilities that his son moved into the unit and occupied it for at least six months.

The Tenant's application is dismissed without leave to reapply.

Conclusion

The Tenant was not successful with the application for money owed or compensation for damage or loss related to the Two Month Notice. The Landlord has persuaded me on a balance of probabilities that his son moved into the rental unit.

The Tenant's application is dismissed 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: April 26, 2023

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Residential Tenancy Branch