



# 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 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 confirmed receipt of the tenant's evidence. The landlord submitted 2 pages of evidence, which they did not send to the tenant. I therefore exclude the landlord's evidence, as they are required to send all evidence to the other party.

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 April 1, 2019 and he vacated sometime before the listed, move-out date on the 2 Month Notice. On their application, the tenant wrote they vacated on April 30, 2022. The monthly rent at the end of the tenancy was \$1,000. Filed in evidence was the written tenancy agreement.

The tenant's monetary claim is \$12,000, which is the equivalent of 12 times the monthly rent payable under the tenancy agreement, at \$1,000 per month.

The tenant wrote in their application the following:

*I was evicted, being told by the landlord he was moving into my suite in the house, he did not. By the time I realized that he had lied, trying to eventually evict all the suites in the house with the same reason it was too late for me to dispute it. My neighbors did dispute the eviction seeing what happened with myself and won the dispute. At great expense I had to relocate to a different town and still have been unable to find housing. Thank you.*

[Reproduced as written]

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 explained that the rental unit was in a home with 3 separate rental units, and that he intended occupying all three units. The landlord submitted they tried to evict all three tenants by serving them 2 Month Notices; however, one tenant disputed the Notice and it was successful, as another arbitrator cancelled their 2 Month Notice.

The landlord said that they moved into the downstairs rental unit in July 2022.

The landlord submitted that they wanted to live in the whole house, but because RTB rejected them, they were forced to rent out two of the units. The landlord explained that they were divorcing and they are having financial problems.

As to my inquiries about proof of residency, the landlord said that they have not changed their driver's licence to show the rental unit as their address, as it was still showing another province on the licence. The landlord submitted that the utilities bills have always been in their name.

The tenant submitted that they were told the landlord wanted to evict the whole house, all 3 rental units, as the landlord wanted to live in one, their children were going to live in another one when they visited, and their parents wanted to stay in the 3<sup>rd</sup> rental unit when they visited from another country.

### 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 landlord issued the tenant a 2 Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act, for a listed effective move-out date of April 30, 2022.

The tenant complied with the effective date of the Notice and vacated the rental unit.

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.

Tenancy Policy Guideline 50 applies and states as follows:

*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.*

First of all, the landlord said that they moved into the rental unit in July, 2022, which I find was not within a reasonable period of time after the tenancy ended on April 30, 2022. The landlord gave no explanation, that if he did actually move in, why it was not until July 2022.

Additionally, I also find the landlord submitted insufficient evidence that they moved into the rental unit. The landlord failed to produce any records of their residency at the rental unit, such as their driver's licence showing their new address to be the rental unit, a change of address, a government issued identification, proof of bank records, utilities bills for that specific unit, or insurance records.

I find the lack of documentary evidence is insufficient to show occupancy or residency of a home. The tenant's application was filed and served to the landlord in July 2022, and the landlord confirmed receiving it. This would allow the landlord ample time to provide updated proof they moved into the rental unit.

For this reason, I find the landlord submitted insufficient evidence that they moved into the rental unit within a reasonable period of time after the tenancy ended on April 30,

2022, or that they moved in at all. Therefore, I find that I do not have to consider extenuating circumstances.

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 \$12,000, which is the equivalent of the monthly rent of \$1,000 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 **\$12,100**, the equivalent of monthly rent of \$1,000 for 12 months, or \$12,000, 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 is granted. The tenant has been granted a monetary order for \$12,100.

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: April 18, 2023

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Residential Tenancy Branch