



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the Residential Tenancy Act (the "Act") for the following:

1. a Monetary Order for compensation for the landlord failing to accomplish the stated purpose on a notice to end tenancy pursuant to section 51 or 51.4 of the Act; and,
2. authorization to recover the filing fee for this application from the landlord pursuant to section 72.

TK (the "landlord") and MM (the "tenant") appeared at the hearing.

As both parties were in attendance, I confirmed that there were no issues with service of the Notice of Dispute Resolution Proceeding package and evidence. In accordance with sections 88 and 89 of the Act, I find that both parties were served with the other's application materials.

Both parties were given full opportunity under oath to be heard, to present evidence and to make submissions. Both parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for the landlord failing to accomplish the stated purpose on a notice to end tenancy?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed that the tenancy commenced on August 1, 2018 by way of written agreement. Rent was \$897.21 payable on the first of the month. The tenancy ended on April 30, 2022.

The tenant's monetary claim is \$10,766.52, which is the equivalent of 12 times the monthly rent payable under the tenancy agreement, at \$897.21 per month.

The tenant application states the following:

TK is requesting 12 months compensation from MM for breach of eviction purpose. MM provided TK with a notice of eviction for landlord use. MM moved in and lived full-time in the suite for less than 6 consecutive months before evicting the other tenant in the same building with the same landlord use reason. MM moved upstairs, then rented out TK's previous suite to a new tenant. MM made no attempt to offer the suite back to TK.

[Reproduced as written]

The Notice received from the landlord was dated March 1, 2022, listing an effective move-out date of June 1, 2022. The tenant submitted a copy of the Two-Month Notice into evidence.

The Two Month Notice is submitted into evidence and indicates that it was issued because: "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".

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

The landlord testified that they issued the Notice to End Tenancy because they were given three months to move out of their residence and were required to find a new place to live by May 31, 2022.

The landlord testified that they believed evicting the tenant from their one-bedroom rental unit located in the basement of the landlord's rental property would be the most convenient and least disruptive immediate solution.

The landlord testified that the tenant moved out at the end of April 2022, and they began moving their belongings into the rental unit at the beginning of May 2022. After settling into the suite, the landlord was advised by their lawyer that they would be far more secure in gaining and maintaining their rights to access their two children if they were proactive in obtaining accommodations that had separate bedrooms for each child.

The landlord testified that based on this legal advice, they advised the upstairs tenants of their intention to occupy their three-bedroom rental suite in September 2022. The upstairs tenants moved out on July 3, 2022, and the landlord got everything moved out of the basement suite by the end of July 2022.

The landlord testified they were out of the country for most of the summer and during this time, a neighbour offered to rent out the now vacant basement suite for them while they were away. The basement rental unit was rented for the month of August.

The landlord testified that they were not aware of the regulations for a minimal occupancy period based on personal use of the property nor any consequences. They testified that they had no reason to examine regulations beyond providing proper notice as their expectation and intention was to remain in the downstairs one-bedroom suite for the foreseeable future.

Finally, the landlord drew my attention to the Notice that they issued to the tenant which the tenant submitted into evidence. The landlord noted that on page 2 of the Notice under the heading "Tenant's Compensation for Landlord's Use of Property" it states that following:

If the landlord does not take steps toward the purpose for which this Notice was given or if the unit is not used for the stated purpose for at least six months beginning within a reasonable period after the effective date of the Notice, the landlord or purchaser must pay the tenant an additional amount equal to double the monthly rent paid under the tenancy agreement.

The landlord argued that the Notice that was issued should govern this review for the purpose of determining the monetary claim.

The tenant testified that they learned via the Residential Tenancy Branch website that when a landlord issues a Two-Month Notice to End Tenancy for personal use, the landlord or a close family member must occupy the rental unit for at least six months or they may be required to compensate the tenant to whom the Notice was issued the equivalent of twelve months' rent.

The tenant testified they found a rental listing for their one-bedroom suite and were able to identify their belongings in the photographs. The tenant submitted copies of the rental listing into evidence. The tenant noted that the landlord did not occupy the rental unit for at least six months. The tenant is seeking a monetary order that is equivalent to 12 times the monthly rent payable under the tenancy agreement.

### Analysis

It is evident to me upon review of the Two-Month Notice that while it is a standard Residential Tenancy Branch form, it is a historical version of the Two-Month Notice and contains information that is outdated respecting the tenant's right to compensation pursuant to section 51 of the Act. Importantly, said information was outdated at the time the Two-Month Notice was issued. I also note that while the parties agreed that the landlord in fact, gave three months' notice and not two, I find that this is inconsequential to the determinations in this decision.

With that said, I find in favour of the tenant that the Act in its current form governs my consideration of the issues before me today.

Section 51(2) of the Act states the following:

Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), 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 that

- (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.

In accordance with the above the landlord has the onus to prove on a balance of probabilities that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the Two Month Notice and that the rental unit has been used for the stated purpose for at least six month's duration.

In this case, the landlord concedes that the rental unit was not used for the purpose stated on the Two-Month Notice for at least six months. However, I infer from the landlord's submissions that they are suggesting that extenuating circumstances prevented them from using the rental unit for the minimum required period of six months.

Residential Policy Guideline 50 addresses section 51 of the Act as well as extenuating circumstances. The onus is on the landlord to prove extenuating circumstances prevented them from accomplishing the purpose stated on the Notice.

Section 51(3) of the Act states the following.

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 applicable, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
- (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Policy Guideline 50 addresses section 51 of the Act and extenuating circumstances that if established by the landlord may excuse a landlord from paying the compensation sought by the tenant in this case. Policy Guideline 50 states the following in relation to extenuating circumstances.

F. EXTENUATING CIRCUMSTANCES The director may excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending a tenancy within a reasonable

period after the tenancy ended, from using the rental unit for the stated purpose for at least 6 months, or from complying with the right of first refusal requirement.

These are 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.

I find that the landlord has not established that the circumstances they presented as extenuating could not have been anticipated nor were they out of the landlord's control. While the landlord may have not contemplated the need for more than one bedroom while caring for his children, I find this to be an error in judgment and not an extenuating circumstance.

Moreover, I find it suspect that the landlord found it necessary to remove all of his belongings from the basement suite prior to leaving the country for the majority of the summer and I do not accept that it was not his intention to rent the basement suite out during this time.

Finally, I note that there is nothing before me to support that the landlord could not have occupied both the basement suite and the upper suite of his residential property in order to accomplish the stated purpose of the Two Month Notice for at least six months' duration as required by the Act. Rather, I find that it was landlord's lack of familiarity with their responsibilities under the Act that caused them not to use the rental unit for the purpose stated on the Two-Month Notice and not extenuating circumstances.

Ultimately, I find the landlord has not established that they faced an extenuating circumstance that should excuse them from accomplishing the stated purpose of the Two-Month Notice for at least six months' duration as required under the Act.

Based on my findings above, section 51.3(1) of the Act applies. I issue a Monetary Order in the tenant's favour in the amount of 12 times the monthly rent payable under the previous tenancy agreement.

As the tenant was successful in their application, I find that they are entitled to recover the filing fee for this application from the landlord.

### Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$10,866.52 as follows:

Item	Amount
(12 x \$897.21)	\$10,766.52
Filing Fee	\$100.00
<b>Total Monetary Order</b>	<b>\$10,866.52</b>

The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: May 23, 2023

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Residential Tenancy Branch