



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC, FFT

### Introduction

This hearing occurred by conference call based on an Application for Dispute Resolution filed by the Tenant August 02, 2022 (the "Application"). The Tenant applied:

- For compensation because the tenancy ended as a result of a Two Month Notice to End Tenancy, and the Landlord has not complied with the Act or used the rental unit for the stated purpose
- To recover the filing fee

The Tenant appeared at the hearing with their spouse. The Landlord appeared at the hearing with their spouse, daughter and V.L. to translate. The Landlord called C.B. as a witness at the hearing.

Both parties provided evidence for the hearing. I confirmed service of the hearing package and evidence and there were no service issues.

The parties were given an opportunity to provide relevant evidence and submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Tenant entitled to compensation because the tenancy ended as a result of a Two Month Notice to End Tenancy, and the Landlord has not complied with the Act or used the rental unit for the stated purpose?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

The Tenant seeks \$23,100.00 under section 51 of the *Residential Tenancy Act* (the “Act”) for the Landlord failing to follow through with the stated purpose of a Two Month Notice to End Tenancy for Landlord’s Use of Property dated April 05, 2022 (the “Notice”).

There was no issue that there was a tenancy agreement between the parties. The parties agreed rent was \$2,100.00 at the end of the tenancy. The parties agreed the Tenant moved out of the rental unit June 29, 2022.

The Notice is in evidence. The grounds for the Notice were:

1. The rental unit will be occupied by the Landlord or the Landlord's spouse.
2. **All of 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 a close family member intends in good faith to occupy the rental unit.

The effective date of the Notice was June 30, 2022.

The parties agreed the Notice was served on the Tenant.

At first, the parties agreed the Tenant moved out of the rental unit because of the Notice.

The Landlord said that at the end of March or start of April, they received an offer to purchase the rental unit and accepted this offer. The Landlord said this was a conditional sale and one of the conditions was not met so the sale fell through on April 06, 2022.

The Landlord said the rental unit ended up selling to new purchasers July 11, 2022. The Landlord said the offer for this second sale was made July 02, 2022.

The Landlord said them or a close family member never moved into the rental unit and the purpose was always to sell the rental unit.

The Notice was issued April 05, 2022. The Landlord agreed they did not have grounds to issue the Notice April 05, 2022, because all the conditions for the sale of the rental unit had not been satisfied. The Landlord said the Notice was issued by mistake.

The Landlord then changed their original position and said the Tenant did not move out of the rental unit because of the Notice. The Landlord said the Tenant was going to move out anyway. The Landlord acknowledged they never received written notice from the Tenant ending the tenancy. The Landlord acknowledged they never issued the Tenant a different notice to end tenancy under the *Act*. The Landlord said they spoke to the Tenant and told them they could stay in the rental unit until the Landlord found another purchaser; however, the Tenant said they were going to move out anyway. The Landlord acknowledged there is nothing in writing about the Landlord trying to cancel or withdraw the Notice. The Landlord then changed this and said there was a text message about the Notice being withdrawn or cancelled; however, the Landlord could not point to this in evidence.

The Landlord called C.B. as a witness who testified as follows. C.B. was present for a conversation between the Landlord and Tenant about the Notice. The Landlord did not say specifically that they wanted to cancel or withdraw the Notice. The Landlord did tell the Tenant they could stay in the rental unit until a new purchaser was found. The Tenant said they would move out at the end of June because they were moving cities.

The Tenant denied the tenancy ended for any reason other than the Notice. The Tenant said the Landlord issued the Notice and the Tenant started deciding where they would move. The Tenant said they never agreed to the Landlord cancelling or withdrawing the Notice. The Tenant said the Landlord did not tell the Tenant they could stay except for a few days after the effective date of the Notice. The Tenant said the tenancy ended based on the Notice and the Landlord did not comply with the Notice.

Both parties provided documentary evidence which I have reviewed and considered.

### Analysis

The Notice was issued under two sections of the *Act*, sections 49(3) and 49(5), which state:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

(5) A landlord may end a tenancy in respect of a rental unit if

(a) the landlord enters into an agreement in good faith to sell the rental unit,

(b) **all the conditions on which the sale depends have been satisfied,**  
and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds...

Section 51 of the *Act* states:

(2) Subject to subsection (3), the 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...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...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.

(3) The director may excuse the landlord...from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord...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.

The Landlord agreed them or a close family member never moved into the rental unit and the purpose was always to sell the rental unit. The Landlord clearly did not follow through with the first purpose stated on the Notice. The Landlord did not rely on extenuating circumstances to explain why they or a close family member did not move into the rental unit and acknowledged the point was always to sell the rental unit.

The Landlord was only allowed to issue the Notice under section 49(5) of the *Act* when all the conditions for the sale of the rental unit had been satisfied. The Notice was issued April 05, 2022, in relation to the first planned sale. However, the sale was conditional and all conditions had not been satisfied and the Landlord did not have grounds to issue the Notice. The Landlord should not have issued the Notice April 05, 2022. The first planned sale fell through April 06, 2022, and therefore the Notice was not complied with and the second purpose stated on the Notice was not met.

I acknowledge the rental unit was eventually sold; however, this occurred July 11, 2022, after the effective date of the Notice and after the Tenant had moved out. The second sale cannot constitute the Landlord following through with the stated purpose of the Notice because the Notice was not issued based on the second sale.

The Notice was issued based on the first sale which fell through and therefore the purpose of the Notice was not met. This is the Landlord's fault for having served the Notice before they had grounds to do so. It is the Landlord's actions that resulted in the purpose of the Notice not being met. The Landlord did not provide any compelling extenuating circumstances. The Landlord stating they made a mistake is not sufficient. The Landlord was expected to know their obligations under the *Act* and to comply with them.

There was discussion during the hearing of the Landlord trying to cancel or withdraw the Notice. RTB Policy Guideline 11 deals with this and states:

A landlord or tenant **cannot unilaterally** withdraw a notice to end tenancy.

A notice to end tenancy may be withdrawn prior to its effective date **only with the consent** of the landlord or tenant to whom it is given.

Both parties had to agree to the Notice being cancelled or withdrawn. I do not accept that both parties agreed to the Notice being cancelled or withdrawn because the parties gave different testimony on this point and there is no documentary evidence showing the Notice was cancelled or withdrawn.

The Landlord argued that the Tenant wanted to move after the first sale fell through. This does not change the outcome. Once the Landlord issued the Notice, the Tenant was entitled to accept the Notice and move out. The Tenant doing so does not change their right to compensation under section 51 of the *Act*.

The Landlord argued that the tenancy did not end because of the Notice. I do not accept this. The text messages in evidence show the tenancy ended because of the Notice. There is no compelling evidence that the Tenant provided notice ending the tenancy or that the tenancy ended based on some other notice to end tenancy issued under the *Act*. I note that the Landlord changed their position and testimony about this issue during the hearing.

Given the above, section 51(2) of the *Act* applies and the Landlord must pay the Tenant \$25,200.00 (\$2,100.00 x 12).

The Tenant is entitled to recover the filing fee under section 72(1) of the *Act* because they have been successful in the Application.

In total, the Landlord owes the Tenant \$25,300.00 and the Tenant is issued a Monetary Order in this amount.

### Conclusion

The Application is granted. The Tenant is entitled to \$25,300.00 and is issued a Monetary Order in this amount. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: May 25, 2023

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Residential Tenancy Branch