



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNETC, MNDCT, FFT

### Introduction

The former Tenants (hereinafter, the “Tenant”) filed an Application for Dispute Resolution on August 22, 2022. They are seeking compensation related to the Purchaser ending the tenancy in 2021.

The matter proceeded by hearing on May 16, 2023 pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

### Preliminary Matter – The Tenant’s disclosure of evidence

At the start of the hearing, I reviewed the Tenant’s disclosure to the Landlord of their prepared evidence for this hearing. The Tenant set out that they sent the Notice of Dispute Resolution Proceeding to the Purchaser. This was the address of their former rental unit. They sent “certified mail” to the Purchaser at that rental unit address that contained the evidence they had at the time they applied for this hearing.

The Purchaser confirmed they received the Notice of Dispute Resolution Proceeding and evidence in place at that time, and they specified the date of September 12, 2022.

The Tenant provided later evidence to the Purchaser and provided the same evidence to the Residential Tenancy Branch on May 10, 2023. The Tenant explained this later date by referring to the difficulty with uploads to the Residential Tenancy Branch online portal; they required assistance from others in handling this evidence in preparation for this hearing. They also cited the Landlord providing evidence relatively late for this hearing, causing further delay.

The Tenant stated the delivery of this evidence via registered mail to the Purchaser was on May 11, 2023. The Purchaser stated they received this evidence; however, they weren't able to review it all before the hearing.

This hearing process is governed by the *Residential Tenancy Branch Rules of Procedure*. The Tenant received full documentation about this hearing process when they applied.

As per Rule 3.11, I find the Tenant unreasonably delayed the service of evidence to the Purchaser, when it was available quite some time ago and the Tenant had months to prepare for this hearing. I find what the Tenant prepared was not dependent on what the Purchaser provided in response. I find this was not new and relevant evidence that was not available to the Tenant at the time they applied, and I do not accept this late evidence. The Tenant did not serve this evidence more than 14 days before the hearing; I find this prejudiced the Purchaser in this proceeding.

For these reasons, I omit from consideration the Tenant's later evidence submitted in May 2023, less than one week prior to the scheduled hearing. I do not accept that technical issues prevented the Tenant from providing this material much earlier.

In the hearing, on review of the Tenant's original tenancy agreement that they signed in 2017, the Purchaser noted that they did not receive a copy of this as evidence for this hearing process. This is also prejudicial to the Purchaser when a portion of my consideration below must establish the basic rent amount that the Tenant paid in the past. I omit the document itself from consideration because I find it more likely than not that the Tenant did not provide this document to the Purchaser as evidence for this hearing. I find the Purchaser credible on this particular point because they described the evidence they did receive, and they answered directly in the negative when I asked if they had that document.

#### Preliminary Matter – Purchaser's evidence to the Tenant

The Tenant in the hearing confirmed they received the Purchaser's evidence. Though the Tenant cited the Purchaser's late provision of evidence in this proceeding – *i.e.*, approximately 10 days prior to the scheduled hearing – I accept the evidence from the Purchaser for consideration. This is within the timeline set out in Rule 3.15, that is "not less than seven days before the hearing."

#### Preliminary Matter – Tenant's issue on Application

The Tenant indicated they are seeking compensation “for my monetary loss or other money owed” on their Application. They also applied for compensation related to the Landlord’s ending the tenancy with a Two-Month Notice to End Tenancy for the Landlord’s Use of the Rental Unit (the “Two-Month Notice”).

This is the single issue for consideration; I amend the Tenant’s Application to withdraw the issue of monetary loss/other money owed. I list the issues to be decided below.

#### Issue(s) to be Decided

Is the Tenant entitled to monetary compensation for the Purchaser ending the tenancy, pursuant to s. 51 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee?

#### Background and Evidence

As set out above, the copy of the tenancy agreement that the Tenant provided to the Residential Tenancy Branch only is omitted from the record. The Tenant stated the rent amount they paid for the entirety of the tenancy that started in 2017 was \$1,650. This was the “same” and “never increased” over the course of the tenancy. This is the amount they provided on their Application to the Residential Tenancy Branch.

In the hearing, the Tenant then stated their rent amount was \$1,675 as at the end of the tenancy. On this point, the Purchaser reiterated that they had no interactions ever with this Tenant, and did not know the details about any agreement that was in place.

The former Landlord served the Two-Month Notice to the Tenant on June 14, 2021 as shown in the copy of that document in the evidence. The Tenant did not formally challenge the end-of-tenancy notice in a formal dispute resolution proceeding.

Page 2 of the document indicates that the sale of the rental unit was completed, and the Purchaser asked the Landlord for vacant possession. The Tenant in the evidence provided the document titled ‘Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession’, signed by the Purchaser on June 11, 2021. This set the final end-of-tenancy date at August 31, 2021, the same date the Landlord provided on the Two-Month Notice.

The Tenant stated they moved out from the rental unit within 10 days. They provided a record of this arrangement to the Landlord with a Mutual Agreement to End Tenancy document, agreeing to move out from the rental unit by 2pm on August 1, 2021. The Tenant stated this document was merely their means of notifying the Landlord of that final end-of-tenancy date.

After the Tenant moved out, from their new accommodation they later began another search for a living arrangement. At this time, they discovered a new ad on Facebook for their former abode, *i.e.*, the rental unit. In their evidence provided with their Application, the Tenant reproduced the Facebook advertisement looking for a female roommate needed, by an individual "EG". This was for a sublet arrangement, allegedly in the rental unit, being an apartment "on the 17<sup>th</sup> floor" at the rental unit's street address. The rent amount sought by EG who posted this advertisement was \$1,100 per month.

The Purchaser noted inconsistencies with the ad's content: only 730 sq. ft., and 1 bedroom/bathroom apartment. The Purchaser also claims that they have no idea who the per EG who listed the advertisement is.

The Purchaser presented a confirmation from the property manager that their move-in date to the rental unit was on September 4, 2021. The Purchaser maintains they lived in the rental unit since that time, as shown on their driver's license in their evidence. They presented a listing of their account with the strata, showing no other strata fees for move in for other renters or sub-tenants. The Purchaser did acknowledge that a friend of theirs had been living in the rental unit with them since November 2021.

Though the Tenant contacted the lister EG directly, the Tenant did not ascertain that the unit being advertised was that exact unit number of their former rental unit. The reference in the advertisement is to a 17<sup>th</sup> floor unit. The Purchaser stated that because of the building's layout the 16<sup>th</sup> floor is very close to the 17<sup>th</sup> floor. The Purchaser reiterated that the message itself does not provide confirmation that the unit number is precisely that of the former rental unit.

The Tenant also provided testimony in which they stated that they discovered that the Purchaser's guest in the rental unit is friends via Facebook with EG. The Tenant also referred to pictures as they appeared on the rental unit advertisement, in comparison to personal photos they had from the interior of the rental unit, presenting that the rental unit is that which was advertised by EG.

In sum, the Tenant presents in this Application that the Landlord did not use the rental unit for the stated purpose they indicated on the Two-Month Notice. They submit that the Purchaser ended the tenancy only to have new tenants for which they could charge more rent. The Tenant's claimed amount is \$19,800, the equivalent of 12 months of rent.

### Analysis

Under s. 49 of the *Act* a purchaser – via a landlord -- may end a tenancy if they or a close family member intends in good faith to occupy the rental unit. There is compensation awarded in certain circumstances where a purchaser issues a Two-Month Notice. This is covered in s. 51:

- (2) Subject to subsection (3), the Landlord or, if applicable, the purchaser who asked the Landlord to give the notice must pay the Tenant . . . an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if
  - (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose of ending the tenancy, or
  - (b) 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.
- (3) The director may excuse . . . the purchaser who asked the landlord to give the notice from paying . . . if, in the director's opinion, extenuating circumstances prevented the . . . purchaser 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.

The onus is on a purchaser to prove they accomplished the purpose for ending the tenancy. If this is not established, the amount of compensation is 12 times the monthly rent. A purchaser may only be excused from these requirements in extenuating circumstances. This is not a question of a purchaser's "good faith" in issuing the notice to end tenancy -- that question is the proper focus when a tenant applies to challenge the actual end of the tenancy and the Tenant did not do that here.

The Tenant's Application for compensation in the amount of \$19,800 is based on the \$1,650 rent amount, as provided on their Application. I give no weight to the Tenant's statement that they paid \$1,675 at the end of the tenancy, with no record to show that in their evidence. While I have omitted the tenancy agreement from consideration in this

proceeding, and that would normally be presented as proof of the rent amount, I will accept that the Tenant's paid rent in the amount of \$1,650. Their statement in the hearing that the rent amount had never been increased I find as fact.

The issue of the Purchaser accomplishing the stated purpose for ending the tenancy falls on the Purchaser. I find in this proceeding that the Purchaser has proven this point, with basic information they used to describe their move into the rental unit and making this their primary residence from that time forward.

Though the Tenant presented that a person associated with the rental unit – so identified as EG – advertised for a roommate/subtenant via Facebook, I find this does not outweigh the Purchaser's evidence and direct testimony that they have lived in the rental unit since they moved in on September 4, 2021, and have always been present and not taken on the role of "landlord" by renting out to others. The Tenant did not present proof positive that a different situation existed.

On the finer points of what the Tenant presented, I note the rental unit is not identified by the individual unit number. I find what the Tenant described as a connection from the Purchaser's friend/guest is weak; that is to say, it is something so far removed from possibility that it stands as mere suspicion and was not shown in evidence on the record in this proceeding. The other points raised by the Tenant about the uncanny resemblance of the advertisement's pictures versus their own interior photos was not on the record due to my finding on evidence above.

In sum, I find as fact that the Purchaser occupied the rental unit from September 4, 2021 onwards, and there is no proof to show otherwise. The Purchaser has overcome the burden of proof in this proceeding to show they occupied the rental unit, in line with the stated reason for ending the tenancy via Two-Month Notice in 2021.

Minus evidence, and firm information that outweighs that of the Purchaser here, I dismiss the Tenant's claim for compensation under s. 51 of the *Act*, without leave to reapply.

Conclusion

For the reasons outlined above, I dismiss the Tenant's claim for compensation related to the Purchaser's Two-Month Notice. This is without leave to reapply. The Tenant was not successful in this Application; therefore, I grant no reimbursement of the Application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: May 16, 2023

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Residential Tenancy Branch