



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

**Dispute Codes**      MNECT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 1:40 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenants were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The tenant confirmed that they understood.

The tenant provided sworn, undisputed testimony that the landlord was served with the tenant's application for dispute resolution and evidence package on September 23, 2022, December 24, 2022, and April 8, 2023 by way of registered mail to the address provided on the 2 Month Notice. The tenant provided proof of service, including the tracking information in their evidence package. The tracking numbers are noted on the cover page of this decision. The tenant also followed up by emailing the landlord on December 10, 2022 and December 29, 2022, as well as by text message on December 29, 2022. The tenant also dropped off the package on May 12, 2023 at the same address. I find that the tenant exceeded the requirements for the service of their application and evidence. In accordance with sections 88, 89, and 90 of the *Act*, I find the landlord deemed served with the tenant's application and evidence for this hearing

on September 28, 2022, 5 days after mailing. The landlord did not submit any written evidence for this hearing.

**Issues(s) to be Decided**

Is the tenant entitled to a monetary award for the landlord's failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

**Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on December 1, 2019, and ended on October 2, 2020 after the tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use on July 27, 2020. The tenant disputed the 2 Month Notice, but the 2 Month Notice was upheld by an Arbitrator after a hearing was held on September 28, 2020. Monthly rent was set at \$1,475.00, payable on the first of the month at the end of the tenancy.

A copy of the 2 Month Notice was submitted for this hearing, and notes the following reason for ending the tenancy: "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 spouse)". In response to the question "Please indicate which close family member will occupy the unit", the landlord had selected "The child of the landlord or the landlord's spouse".

The tenant filed this application on September 4, 2022 as they had observed the unit to be vacant. The tenant checked with the tenant downstairs, who confirmed that they never saw the landlord's son living there. The tenant notes that the tenants in the upper suite also never saw the son living there.

**Analysis**

Section 51(2) of the *Act* reads in part as follows:

*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, 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*

*(a) 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*

*(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 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.*

As noted in RTB Policy Guideline 2a, “the onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under section 49 of the RTA and that they used the rental unit for its stated purpose for at least 6 months.”

In this case, I find that the landlord has not provided any evidence to support that they had used the rental unit for the stated purpose for at least six months, as required by the legislation. Accordingly, I find that the tenant is entitled to compensation equivalent to 12 times the monthly rent.

### **Conclusion**

I issue a \$17,700.00 Monetary Order in favour of the tenant for compensation under section 51(2) of the *Act*.

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 30, 2023