



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNETC

### Introduction

This hearing was scheduled to hear a tenant's monetary claim against the landlord for compensation payable where a landlord ends the tenancy for landlord's use and does not use the rental unit for the stated reason.

Both the landlord and the tenant appeared for the hearing and the parties were affirmed.

I confirmed the landlord received the tenant's proceeding package via registered mail sent on August 3, 2022 and the landlord received the tenant's evidence that was delivered in person on March 23, 2023. I confirmed the tenant received the landlord's evidence sent on March 28, 2023 and delivered on March 30, 2023. Accordingly, I admitted the parties' respective hearing materials and considered it in making my decision.

The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

### Issue(s) to be Decided

1. Is the tenant entitled to compensation equivalent to 12 months of rent from the landlord, as claimed?
2. Award of the filing fee.

### Background and Evidence

The tenancy started in 2011 with a former landlord. The named landlord purchased the property in May 2021 and inherited the tenancy. The tenants were required to pay rent of \$1095.00 on the first day of every month.

The building on the residential property is a duplex. The landlord owns both sides of the duplex. Each side of the duplex has a lower level that contains a kitchenette, bathroom, living area and bedroom that is physically capable of being used as a basement suite although the property was zoned for only two dwellings.

The tenancy agreement provides for the rental of the entire half-duplex by the co-tenants. The tenant described how the lower level and upper level are only separated by an interior door in a laundry room and that during their tenancy they left the door open so that both co-tenants had free access to both levels of the unit.

On June 23, 2021 the landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") with a stated effective date of August 31, 2021. The reason indicated on the Two Month Notice for ending the tenancy was that the landlord or landlord's spouse intended to occupy the rental unit. The tenants did not dispute the Two Month Notice and withheld rent for August 2021 as compensation for receiving the Two Month Notice, as permitted under the Act. The tenants vacated the rental unit, albeit a few days late, on September 4, 2021.

The tenant filed this application indicating the landlord did not occupy the rental unit in the 11 months after the tenancy ended and that the basement suite was rented out.

### **Landlord's position**

The landlord submitted that the rental unit required renovations before he and his wife moved in as there was much deferred maintenance. The landlord testified that he started by getting the downstairs bathroom in good condition and in October 2021 the landlord started using the upper level as office space and had a friend live, part time, in the lower level for security reasons. The landlord and his wife continued to work on renovating the upper level but this took some time as trades were difficult to get and there were supply chain issues. Also, the landlord's father-in-law died; the landlord and his wife got ill with Covid; and, the landlord spent time visiting his ill father. The city also issued a stop-work order which required the landlord to get permits and have

inspections performed. In May 2022 the landlord's friend moved out of the basement and the landlord rented the basement suite to other tenants.

The renovations were finally completed upstairs and the landlord and his wife moved in on July 12, 2022.

The landlord submitted that the basement has a separate suite from the main unit and that the landlord and/or his spouse did occupy the main unit, and that no other person occupied the main part of the rental unit other than them. Further, renovations were required and the landlord used the unit as office space while renovations were underway and the landlord did not unreasonably delay in having the renovations made or moving into the rental unit.

The landlord's evidence included documents to support that he used the rental unit as his office while renovations were underway; efforts made to perform renovations; and the invoice for moving the landlord's residence to the subject property in July 2022.

### **Tenant's position**

The tenant pointed out that a person other than the landlord or landlord's spouse moved into the basement a month after the tenant moved out. The tenant questioned the landlord's reason for having a person live in the basement starting in October 2021. The tenant stated that the person living in the other side of the duplex told him, and wrote a statement, describing how the person living in the basement told her that he found the basement suite for rent on-line. Another neighbour told the tenant, and wrote a statement, the person living in the basement suite told him that he was renting the basement suite and was a friend of the landlord. That person then moved out of the basement suite in May 2022 and a new tenant moved in in May 2022 and that new tenant is still living there.

The tenant argued that he and his co-tenant rented the entire half-duplex and that a landlord must occupy the entire rental unit without reconfiguring it and renting a portion of it out to others.

The tenant agreed with the landlord that the rental unit was old and had not been well maintained over the years. However, the tenant argued the landlord could have resided in the rental unit while performing renovations and if the landlord wanted to end the tenancy for another purpose, such as renovations or for use as office space, the landlord would have had to issue the appropriate notice to end tenancy. The tenant

pointed to the landlord's lack of obtaining permits as indicating that the landlord was not performing a significant renovation that required vacant possession of the rental unit.

As evidence, the tenant provided signed statements of neighbours that after the tenancy ended the landlord was rarely seen at the property, although some renovations did take place, but the basement suite was rented out.

### **Final submissions**

The landlord claimed the tenant had installed the basement suite. The tenant responded that the kitchenette was pre-existing but that he had improved the lower level kitchenette during his tenancy.

The landlord stated he did not have full access to the rental unit prior to gaining vacant possession so he did not realize the full extent of the work required to renovate the unit. The tenant denied that he interfered with the landlord right to enter the rental unit provided proper notice to enter was given by the landlord.

### **Analysis**

With respect to the tenant's claim against the landlord, I provide the following findings and reasons.

Section 49 provides that a tenancy may be ended where the landlord or close family member of the landlord intends, in good faith, to occupy the rental unit. In order for a landlord to end a tenancy for this reason, the landlord must give the tenant a Two Month Notice to End Tenancy for Landlord's Use of Property, in the approved form. In this case, the landlord issued such a notice to the tenants and the tenancy ended pursuant to section 49 of the Act.

Where a tenancy is ended under section 49 of the Act, the landlord is obligated to pay compensation to the tenant, as provided under section 51 of the Act.

The tenant has already received the compensation payable under section 51(1) of the Act, which was the equivalent of one month's rent that was obtained by withholding rent for August 2021.

The application before me is for additional compensation equivalent to 12 months of rent. This compensation is provided for under section 51(2) of the Act. Section 51(2) provides as follows:

(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.**

[My emphasis added]

Subsection 51(3) provides a mechanism for the Director, as delegated to an Arbitrator, to excuse the landlord from having to pay the compensation provided under section 51(2) if “extenuating circumstances” prevented the landlord from accomplishing the stated purpose within a reasonable amount of time after the tenancy ended or using the rental unit for the stated purpose for at least six months.

The spirit of the Act is to preserve existing tenancies. As such, the Act provides very specific and limited circumstances when a landlord may end a tenancy. The Act also provides very serious consequences for landlords who state they are ending the tenancy for landlord’s use of property but then does not fulfil the stated purpose after the tenancy ends within a reasonable amount of time or for a minimum of six months. The consequence for the landlord is the requirement to pay the tenant additional compensation under section 51(2) and it is a significant financial consequence intended to create a real deterrence to ending a tenancy for false reasons and/or ulterior motives.

In this case, the landlord submitted that he started using the rental unit as office space in October 2021.

With respect to using the rental unit as office space, the Act does permit a tenancy to be ended so that the rental unit may be converted for non-residential use, such as an office; however, that requires the landlord to issue a Four Month Notice to End Tenancy

for Demolition, Renovation, Repair or Conversion of a Rental Unit, which was not done in this case. Residential Tenancy Policy Guideline 50 provides a relevant example of this issue, under the heading “Accomplishing the Purpose/Using the Rental Unit”

*Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit for that stated purpose for at least 6 months. Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy. For instance, if a landlord gives a notice to end tenancy under section 49, and the stated reason on the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit for at least 6 months. A landlord cannot convert the rental unit to a non-residential use instead.*

[My emphasis underlined]

The landlord did not issue a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit but chose to issue a Two Month Notice. Therefore, I do not consider the landlord's use of the rental unit as office space as sufficient to meet his obligation to occupy the rental unit for the purpose stated on the Two Month Notice.

The landlord submitted that he and his wife moved into the main part of the rental unit, in July 2022, which was supported by a moving invoice, and the tenant did not dispute that. It was also undisputed that the rental unit was old and had not been well maintained over the years. Therefore, I accept that the rental unit was in need of repairs and renovations after the tenancy ended.

Performing renovations after a tenancy ends and before an owner moves into a rental unit is not uncommon and the amount of time spent on renovating the rental unit may be relevant where it is argued the landlord did not move into the rental unit within a reasonable period of time after the tenancy ended. However, I find it unnecessary to make a determination as to whether the landlord's occupancy in July 2022 was within a reasonable amount of time after the tenancy ended for the following reason.

It is clear that the landlord gave possession of a portion of the rental unit to persons other than the landlord or landlord's close family member, first to a person who was allegedly the landlord's friend and began residing in the basement in October 2021 and then to a tenant in May 2022. While the landlord was of the position there were two separate living units in the half-duplex, I reject the implication that the landlord was free to give possession or rent out the basement unit before the landlord had fulfilled his obligation to occupy the rental unit for at least six months. Residential Tenancy Policy Guideline 50 also provides, in part, under the heading "Accomplishing the Purpose/Using the Rental Unit":

*A landlord cannot end a tenancy for the stated purpose of occupying the rental unit, and then re-rent the rental unit, or a portion of the rental unit (see *Blouin v. Stamp*, 2011 BCSC 411), to a new tenant without occupying the rental unit for at least 6 months.*

[My emphasis underlined]

My decision turns on the definition or meaning of "the **rental unit**". Section 2 of the Act provides that the Act applies to rental units, residential property and tenancy agreements.

Section 1 of the Act provides for the following definitions:

**"rental unit"** means living accommodation rented or intended to be rented to a tenant;

**"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

[My emphasis underlined]

In this case, the co-tenants had a single tenancy agreement that entitled the tenants to possession of the entire half-duplex in exchange for a single amount of monthly rent. The tenants did not have two different tenancy agreements, one for each level or unit in the half-duplex, despite the existence of a kitchenette in the basement or the physical capability of creating a basement suite by closing an interior door. As such, I find the rental unit was the entire half-duplex and not just the main/upper level. I further find the

landlord's issuance of a single notice to end tenancy to both co-tenants for the entire half-duplex is consistent with "the rental unit" being the entire half-duplex and not limited to the upper/main unit only. Therefore, I find the landlord and/or his spouse was required to occupy the entire half-duplex for at least six months starting within a reasonable amount of time after the tenancy ended before they could rent out the basement suite, which they did not.

Since the landlord did, undeniably, rent out a portion of the rental unit before occupying the rental unit for at least six months, I find the tenant is entitled to the compensation he seeks under section 51(2) of the Act and I award the tenant \$13140.00 [\$1095.00 x 12 months] as requested.

The tenant did not request recovery of the filing fee on his application and I make no such award.

Provided to the tenant with this decision is a Monetary Order in the amount of \$13140.00 to enforce against the landlord.

### Conclusion

The tenant was successful in this application and is provided a Monetary Order in the amount of \$13140.00 to enforce against the landlord.

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 10, 2023

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Residential Tenancy Branch