



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

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

- a monetary order for compensation related to a Notice to End Tenancy for Landlord's Use of Property pursuant to section 51;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence submissions on file.

### **Issues**

Is the tenant entitled to compensation related to a Notice to End Tenancy for Landlord's Use of Property pursuant to section 51 or other compensation for loss?

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

### **Background and Evidence**

The tenancy began on October 31, 2018 and ended on April 29, 2022. The monthly rent at the relevant time was \$600.00.

The landlord purchased the property in December 2021. In a telephone conversation in December 2021 the landlord advised the tenant they will be needing the rental unit for their own family use. The landlord advised the tenant she would not be required to move out until the following spring. On March 28, 2022, the landlord followed up the

phone call with a text message advising the tenant her tenancy would be terminated effective April 30, 2022 as the landlord would be using the rental unit as their second home.

The tenant is claiming an amount equivalent to twelve times the monthly rent as compensation for the landlord not using the rental unit for the stated purpose and also 12 months compensation for the landlord issuing an illegal Notice to End Tenancy. The tenant testified that she had to relocate to another province because of the notice to end tenancy. The tenant also claims the landlord or the landlord's close family did not occupy the rental unit after she vacated. The tenant testified that when she received the text message notice she obtained information from the Residential Tenancy Branch and found out the notice was not proper notice and also that she should be receiving one-month free rent.

The landlord testified that she was being kind in not requiring the tenant to move until after springtime. The landlord testified that she also compensated the tenant for One Month's free rent upon request from the tenant. The landlord stated she just purchased the property as a second home and was not aware of the tenancy rules. The landlord testified that since the tenant vacated the landlord and her family have been using the rental unit for their own use. The landlord testified they were just at the rental property for the May long weekend. They did offer the rental unit to the boyfriend of a neighbor's daughter, but it was only temporary and also was offered as shared accommodation with the landlord.

### Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving a notice to end tenancy. Section 49(7) requires that a notice must comply with section 52 [form and content of notice to end tenancy].

Section 52 of the Act states as follows: **(emphasis for ease)**

#### **Form and content of notice to end tenancy**

**52 In order to be effective, a notice to end a tenancy must be in writing and must**

- (a) **be signed** and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,

- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.**

Section 51(1) of the Act states that a tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Further, Section 51 (2) of the Act provides that if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

I find that the text message notice sent by the landlord on March 28, 2022 does not meet the form and content requirements of Section 52 of the Act; therefore, it was not a valid notice to end tenancy as per section 49 of the Act. I find that the twelve times monthly rent penalty provisions under section 51(2) of the Act only apply in cases where a tenant receives a Notice to End Tenancy under section 49 of the Act which is in compliance with the form and content provisions of section 52.

I note that pursuant to Section 68(1) of the Act, if a notice to end a tenancy does not comply with section 52 *[form and content of notice to end tenancy]*, the director may amend the notice if satisfied that:

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

I find that this provision specifically speaks to information that was omitted from the Notice. Accordingly, I find this provision only allows the Director to amend a notice in the approved form to include omitted information that should have been known to the person receiving it. This provision does not state that the Director may accept or otherwise amend a Notice that is not in the approved form.

The tenant's application for compensation based on the landlord not using the rental unit for the stated purpose is dismissed without leave to reapply.

Similarly, the tenant's application for compensation based upon an invalid notice to end tenancy being issued is also dismissed without leave to reapply. In her own testimony the tenant stated she had received advice from the Residential Tenancy Board after receiving the text message notice. I find the tenant was aware that the notice was not valid notice. The tenant even requested one-month free rent as she was also advised of that provision under the Act had a valid notice been issued. I find the tenant had no legal obligation to vacate until a proper notice was served to her, but she still chose to do so. In either event, the tenant has failed to provide any evidence or proof of losses suffered as a result of having to vacate.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

### Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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: June 01, 2023

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Residential Tenancy Branch