



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNETC, FF

### **Introduction**

This hearing dealt with an application by the tenant for a monetary order for compensation pursuant to a notice to end tenancy for landlord's use of property and for the recovery of the filing fee.

Both parties attended the hearing. Legal counsel for the landlord was also in attendance. The parties were given full opportunity to present evidence and make submissions. Both parties acknowledged receipt of evidence submitted by the other party. I have reviewed all evidence including testimony of the parties but will refer only to what I find relevant for my decision.

### **Issue(s) to be Decided**

Is the tenant entitled to compensation and to the recovery of the filing fee?

### **Background and Evidence**

The tenancy started on August 01, 2016, and ended on May 02, 2022, pursuant to a notice to end tenancy for landlord's use of property. The monthly rent at the end of tenancy was \$2,233.00 payable on the first of each month.

On March 31, 2022, the tenant was served with a two month notice to end tenancy for landlord's use of property. The effective date of the notice was May 31, 2022. The reason for the notice was that a close family member of the landlord, intended to occupy the rental unit.

Based on the testimony and evidence of both parties, I find that the rental unit was located in the basement of the landlord's home. The home consisted of two levels plus a basement. Access to the basement is by a wooden staircase on the outside of the rental property and consists of 5 stairs and a slope to the door of the basement.

The main floor is at street level and the upper floor can be reached by climbing an internal set of 14 steps, from the main floor.

The landlord testified that the main level consisted of a one-bedroom suite which was occupied by his mother. The landlord occupied the upper floor until he moved out shortly after the tenancy started. The landlord's mother continued to occupy the main level of the home.

On March 02, 2022, the landlord's grandmother and aunt came to visit and they occupied the main level of the home. Both had mobility issues. The landlord stated that his mother also had difficulty climbing stairs and therefore did not use the upper floor. The landlord testified that having three people occupy a one-bedroom suite was not feasible and therefore he decided to end the tenancy and have his mother occupy the basement suite.

The tenants were served with a two month notice to end tenancy for landlord's use of property. The tenants did not dispute the notice and moved out on May 02, 2022. The tenants agreed that they had received the last month of rent-free stay.

The landlord testified that his mother moved into the basement the weekend after the tenants moved out and continues to occupy the basement, as of the date of this hearing. The landlord stated that it was necessary for his mother to move to the basement because the main floor was too cramped for 3 occupants, and that his mother has mobility issues which prevented her from using the upper floor which involved climbing 14 steep stairs.

The tenant argued that the entrance to the basement suite is from the outside of the home and has five stairs plus a slope that can be dangerous in winter. The tenant pointed out that the landlord failed to fully describe the access to the basement in his testimony and in the photograph, he filed into evidence. The photograph shows 5 stairs but not the slope.

The landlord also stated that upon loss of the rental income, he requested his visitors to contribute towards the running of the home.

The landlord confirmed that he renovated the rental unit by removing a fireplace, relocating an existing door, and installing a new door to create a storage room. Other changes to the suite consist of new flooring and, installation of new appliances (including a dishwasher which was not available during the tenancy).

The landlord filed photographs of the storage room and stated that the dimensions of the room are 11 feet 4 inches by 9 feet 10 inches. The floor plan filed into evidence by the landlord indicates larger dimensions of the storage area (13 feet 11 inches by 11 feet 6 inches). The dimensions provided by the landlord correspond to the area named "entry" on the floor plan.

The photograph of the newly created storage room shows a finished floor and a window. The photograph does not depict the entire room. A few boxes and clothes on hangers are also present in the room. The tenant stated that the room is on the side of the house and the window looks out into the yard. The landlord was clear in his testimony that this room is not an extra bedroom and is used for storage purposes only.

The tenant stated that there is another area for storage in the suite which he used during his six-year tenancy. The tenant testified he believes that the landlord created another bedroom inside the suite, which he is referring to as a storage area.

The landlord denied having created another bedroom. He stated that the storage area in the suite was inadequate and therefore he created an additional area for storage. The storage area on the floor plan appears to be a room that is comparable in size to the bedrooms in the rental unit.

The landlord also filed a letter from the trades person who carried out the renovations and an invoice for the work done. The letter is dated October 24, 2022, and states that the work performed by him included replacement of the carpet with laminate and decommissioning the fireplace. The letter also states that the landlord's mother was in occupation of the suite for the duration of the work. The letter does not refer to the doors installed or relocated and the creation of a storage room.

The invoice is dated August 15, 2022, and describes the work done for a fee of \$9,030.00. The tasks performed are described as:

*Re and re carpet to laminate, baseboard*

*Close off fireplace, haul away*

*Closet and door Install.*

It is not clear whether the closet was installed in the newly created storage area or elsewhere. The landlord did not mention the closet during his testimony.

The tenant testified that some time in August 2022, he was notified of an advertisement on social media regarding the availability of the rental unit. The landlord's mother was the contact person, and she was looking for a "roomie". A copy of the advertisement was filed into evidence by the tenant.

The tenant stated that based on the photographs that accompanied the advertisement on social media, he noticed that a dishwasher was installed. There was no dishwasher during his tenancy. The tenant described other changes made to the rental unit. The flooring was replaced, the walls were painted, the fireplace was removed to create space and two doors were added. The tenant stated that the landlord did not mention the two doors, in his response to the tenant's evidence.

The tenant also stated that during his tenancy of six years, the fireplace in the basement suite was sealed off and therefore he questioned the landlord's statement that the fireplace affected his mother's health and her symptoms ceased after the fireplace was removed from the basement suite.

In response to my question, the tenant admitted that he did not drive by the rental unit or do anything to follow up on the occupants of the rental unit other than to read the *Residential Tenancy Branch Policy Guidelines*.

In closing, the landlord stated that the tenant has not filed any evidence to show that the landlord's mother did not move into the rental unit. The landlord referred to the letters written by neighbours and a counsellor who visited his mother in the rental unit. The letters confirm that the landlord's mother resided in the basement.

### **Analysis**

Section 49 of the *Residential Tenancy Act* allows a landlord to end a tenancy for landlord's use of property. Section 51 of the *Residential Tenancy Act* sets out compensation requirements for landlords who end a tenancy for landlord's use of property.

Sections 51 and 51.4 of the *Residential Tenancy Act* require a landlord to pay further compensation to a tenant if the landlord does not prove that they have accomplished the purpose for which the tenancy was ended within a reasonable period or, in some instances, did not use the rental unit for the stated purpose for at least 6 months duration. The director may only excuse a landlord from having to pay this further compensation if there were extenuating circumstances.

Based on the sworn testimony of both parties and the documents filed into evidence, I find:

The tenancy ended on May 02, 2022, and the landlord carried out renovations in June and July 2022.

In his testimony, the landlord failed to mention that the renovations included the installation of a dishwasher and a closet. It is not clear where the closet is located. If the closet was installed in the newly created storage room, then this storage room has laminate flooring, a window, a door and a closet, which means it has the potential be used as a bedroom.

The landlord provided the dimensions of the newly created storage room. As per the plan filed into evidence by the landlord, which was corroborated by the tenant's testimony, a larger storage room exists at the back of the rental unit. Therefore, this basement unit has two fairly large storage areas.

If the landlord's mother was the sole occupant of the unit, it would stand to reason that a single storage area that was adequate for the tenant and his family, would be sufficient for a single occupant.

The landlord stated that with the loss of rental income he requested his visitors to contribute towards the mortgage. However, despite his testimony that he needed financial help to pay the mortgage, the landlord made changes to the suite at a cost of \$9,030.00.

The persons occupying the main level of the home are visitors and not permanent residents.

The landlord failed to mention that access to the basement included a slope between the stairs and the door to the suite. The photograph filed into evidence by the landlord does not show the slope. Even though there are 14 steps to the upper level, there are bannisters for safety and unlike the steps/slope to access the basement, the steps to the upper level are not exposed to the elements.

The landlord advertised the availability of the rental unit in August 2022.

The tenant admitted that he did not file any evidence to support his testimony that the landlord's mother did not occupy the rental unit.

Having considered the above, I find that the landlord renovated the unit after the tenant moved out and advertised for a renter to share the suite. I further find on a balance of probabilities that it is more likely than not that the landlord created an extra bedroom in the basement.

*Residential Tenancy Branch Policy Guidelines 2A* addresses:

Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member

Reclaiming a rental unit as living space

If a landlord has rented out a rental unit in their house under a tenancy agreement, the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation.

For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room or using a carriage home or secondary suite on the residential property as a recreation room.

A landlord cannot reclaim the rental unit and then reconfigure the space to rent out a separate, private portion of it. In general, the entirety of the reclaimed rental unit is to be occupied by the landlord or close family member for at least 6 months.

In this case, the landlord renovated the rental unit and advertised the availability of a portion of the suite. The landlord stated that he did not find a renter, but his actions indicate that he had intentions of renting out all or a portion of the unit by reconfiguring the space inside the unit.

Based on the above, I find that on a balance of probabilities, it is more likely than not that the landlord created a third bedroom in the two-bedroom unit. The landlord stated that his mother was the only occupant of the rental unit and therefore creating a third bedroom is unnecessary unless the landlord planned to rent out all or a portion of the suite.

Even if the additional room was created for storage, it was equipped with laminate flooring, a window, a door and possibly a closet. I find that the tenant and his family (total 3 persons) used the existing storage for the duration of their six-year tenancy.

The tenant stated that the available storage was adequate for him and his family. However, the landlord decided to create an additional storage room for a single occupant.

In addition, the landlord expressed that he needed financial help from his visitors to pay the mortgage while he chose to spend money doing renovations and creating additional space in a two-bedroom suite, to accommodate a single person.

By carrying out renovations, creating an extra room and advertising the availability of space in the rental unit, the landlord confirmed his intentions of ending the tenancy for the purpose of renting all or a portion of the basement.

Based on my findings, the landlord, under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

Since the tenant is successful in his application, he is entitled to the recovery of the filing fee of \$100.00.

I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act* for \$26,896.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the tenant a monetary order of **\$26,896.00**.

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 13, 2023

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Residential Tenancy Branch