



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **MNETC, FFT**

### **Introduction**

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- Compensation from the landlord related to a notice to end tenancy for Landlord's use of property pursuant to section 51; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both the tenant and the landlord attended the hearing. The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package and the tenant acknowledge service of the landlord's evidence. I find both parties effectively served pursuant to sections 88 and 89 of the Act.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an affirmation to tell the truth and they both confirmed that they were not recording the hearing.

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

Did the landlord use the rental unit for the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice, and for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice?

### **Background and Evidence**

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In

accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The rental unit is one of two lower units situated below the landlord's upper floor unit. The other lower unit is occupied by an unrelated occupant.

The tenant testified that in April of 2021, she was paying \$732.50 per month in rent when she was served with a 2 Month Notice to End Tenancy for Landlord's Use by the landlord on April 30<sup>th</sup>. The effective date stated on the notice to end tenancy was July 01, 2023, however the tenant moved out on May 18, 2023.

A copy of the notice to end tenancy was provided. The reason for ending the tenancy was because the rental unit will be occupied by the child of the landlord or the landlord's spouse. The tenant testified that she ran into the occupant of the other lower unit who advised her that the landlord's son never moved in. She was under the impression that it was the landlord's son and not her daughter that was the intended occupant of the rental unit.

The landlord gave the following testimony. Her daughter had been accepted into the RCMP training academy in February, 2021. While there, the landlord's daughter informed the landlord that she wanted to move into the rental unit occupied by this tenant when she finished training. After graduation, the daughter was posted to a detachment too far away from the rental unit and she was unable to move in as intended.

The landlord testified that the unit remained vacant from the time the tenant moved out (May 18, 2021) to the time they got another tenant for December 01, 2021. The landlord understood that she has complied with the Act in not renting it out for 6 months from when the tenant vacated the unit, not from the effective date noted on the notice to end tenancy for landlord's use.

### Analysis

Section 51 of the *Act* states a tenant who is served with a Notice to End Tenancy for Landlord's Use ("notice") pursuant to section 49 is entitled to compensation in an amount equivalent to 12 times the monthly rent if 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 use the rental unit for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Residential Tenancy Branch Policy Guideline PG-50 [Compensation for Ending a Tenancy] states at part C:

#### **Accomplishing the Purpose/Using the Rental Unit**

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 end a tenancy for the stated purpose of occupying the rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

Moreover, PG-2A [Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member] states:

#### ***Vacant possession***

Other definitions of "occupy" such as "to hold and keep for use" (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose.

Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.

#### ***6-month occupancy requirement***

The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).

As stated in PG-2A, **vacant possession** is the absence of any use at all. In order to prove the landlord has accomplished the stated purpose for ending the tenancy, the landlord's son or daughter must occupy it. In the matter before me, the landlord acknowledged that the rental unit remained vacant from the time the tenant vacated it (May 18, 2021) to the time it was re-rented to another tenant on December 01, 2021. This is inconsistent with the intent of section 49.

Further, section 51 is clear in stating that the 6- month duration for occupying the unit (which the landlord's child failed to do) must begin within a reasonable period **after the effective date of the notice**. Even if the landlord's child had occupied the unit for the 6 months commencing May 18, 2021, the child has to continue occupying it until the end of December, 2021 in order to fulfil the requirement of occupying it for 6 months after the effective date of the notice (July 01, 2021 to December 31, 2021). When the landlord entered into a new tenancy agreement with another tenant commencing December 01, 2021, only 5 months had passed from the notice's effective date.

I do not find the landlord's daughter's posting to a detachment far away from the rental unit to be an extenuating circumstance that could excuse the landlord from paying the compensation under section 51. Only matters that could not be anticipated or were outside a reasonable owner's control would qualify as extenuating circumstances.

The landlord evicted the tenant because her daughter informed the landlord that she wanted to move in after her RCMP training. There was no assurance from the RCMP that the landlord's daughter would be posted to the location where the rental unit was. I find the possibility that the landlord's daughter could be posted to any location serviced by the RCMP is something that could have easily been anticipated. It was within the landlord's control to know where her daughter was going to be posted before ending the tenancy with the tenant. As a result, I find no extenuating circumstances that would excuse the landlord from having to pay the compensation under section 51.

I find the landlord did not take the steps within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or use 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 tenant is entitled to compensation at 12 times \$732.50, for a total of \$8,790.00.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I award the tenant a monetary order in the amount of \$8,890.00.

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 06, 2023

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Residential Tenancy Branch