



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, MNETC

### Introduction

On May 20, 2022, the former Tenant (hereinafter referred to as the “Tenant”) filed an Application for compensation for monetary loss, and compensation related to the end of the tenancy. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 9, 2023. I adjourned the matter and the hearing reconvened on June 8, 2023.

### Preliminary Matter – Purchaser’s evidence and attendance

In the first hearing, the Tenant and the Purchaser of the rental unit property attended the hearing. After that, the Purchaser provided evidence to the Residential Tenancy Branch on February 16, 2023. They did not provide to the Tenant for the first hearing session on February 9. The Purchaser’s agent, who attended the first hearing session, then provided documents to the Residential Tenancy Branch on March 2, 2023.

In the reconvened hearing on June 9, 2023, the Tenant confirmed they received no evidence from the Purchaser after the initial hearing session.

In the Interim Decision dated February 9, 2023, I gave specific instructions to the Purchaser to provide their evidence to the Tenant: “The Purchaser must present, in the reconvened hearing, some evidence that they provided their evidence to the Tenant as required.” This was to afford the Purchaser the opportunity to explain the matter fully from their perspective, with reference to evidence they must provide.

I find the Purchaser did not provide their evidence to the Tenant as required for this hearing. This was not in place for the initial hearing session, nor the reconvened

session on June 9. For this reason, I exclude any evidence provided by the Purchaser or their agent from consideration – it would be fundamentally unfair to make any decision in this matter without the Tenant having the opportunity to review evidence submitted.

On February 10, 2023, the Residential Tenancy Branch provided notice to the Purchaser directly via email of the reconvened hearing date. In addition, the Residential Tenancy Branch messaged to the Purchaser on June 6, 2023 with a notification of the June 9 hearing date and time, and teleconference access information.

The Purchaser did not attend the reconvened hearing on June 9. I proceeded with the hearing in their absence.

#### Preliminary Matter – Tenant’s service of evidence to the Purchaser

The Notice of Dispute Resolution Proceeding was generated at the Residential Tenancy Branch on June 9, 2022. The Tenant provided the Notice of Dispute Resolution Proceeding, along with their prepared evidence, to the Respondents in this matter. In the hearing on February 9, 2023, the parties confirmed this. I find as fact the Tenant served their evidence as required; therefore, it receives full consideration in my decision below, along with the Tenant’s testimony in the hearing.

#### Issue to be Decided

- Is the Tenant entitled to compensation for the Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”), pursuant to s. 51 of the *Act*?

#### Background and Evidence

The Tenant provided a copy of the tenancy agreement in their evidence. This shows the tenancy started, with their former Landlord, on July 15, 2018, for the rent amount monthly of \$2,550.

A subsequent agreement in the evidence shows the Tenant and Landlord signed together on September 1, 2020. This shows the rent amount of \$3,000 as of September 1, 2020 as the agreed-upon rent amount.

The former Landlord – at the Purchaser’s request – served the Two-Month Notice to the Tenant on February 26, 2022. This set the end-of-tenancy date for March 31, 2022. This provided as follows:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The Tenant’s evidence has the document titled ‘Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession’. This listed the contract of purchase and sale dated January 25, 2022. This notes “The Buyer(s) . . . intend in good faith to occupy the occupy the Property.” This required the Tenant to vacate the property by 1:00pm on January 25, 2022, with this document signed by the Purchaser on that same day.

The Tenant, in the initial hearing session and in the reconvened session, confirmed their move out from the rental unit was on February 28, 2022. They provided the keys for the rental unit to the Landlord on March 25, 2022. In line with the Two-Month Notice, the final month of the tenancy was rent-free; this was March 2022.

In the initial hearing session, the Purchaser’s agent described the Purchaser wanting to demolish the home because it was not well-suited to their family member’s needs. They stated: “the Tenant moved out in February, and then [the Purchaser] took over in March and had to rent because [the Purchaser] had to change plans.”

In the hearing, the Tenant described seeing an online advertisement for the rental unit’s availability for new tenants, on March 26, 2022. The Tenant provided 23 pages of evidence related to online advertisements, showing:

- an amount of \$3,500 asking for monthly rent for the rental unit home, featuring the “4 beds and 3 baths house” with an image of the front of the rental unit home
- by March 26 the Purchaser’s agent notified, upon direct inquiry from the Tenant about the advertisement, that they were showing the rental unit the following day at 12pm
- the Purchaser’s agent notified the Tenant, upon their inquiry, that a deposit of \$1,750 was required by cash or cheque – the agent also confirmed “\$3500 plus

utilities” – “whole house including garage” and “property vacant and available from 1<sup>st</sup>. April”

- a final piece of the ad gives “unit details”, listing the address of the rental unit – this is as shown on the Two-Month Notice and the tenancy agreement.

In the hearing, the Tenant described contacting the Purchaser’s agent who was listed in the advertisement. That agent confirmed the rental unit could be rented for \$3,500, and a deposit of \$1,750 was required.

In the hearing, the Tenant described visiting to the rental unit after they moved out. This was during the first week of May. They described their visit to the rental unit, speaking to the new occupants at the rental unit, and having them confirm that they are renting. This was a family, perhaps 4 or 5 people by the Tenant’s estimation.

In a summary statement, the Tenant presented that it was the Purchaser’s intention to re-rent the rental unit after their purchase, for a higher amount of rent. They submit the Two-Month Notice was issued in bad faith.

### Analysis

The *Act* s. 49(5) allows for a landlord to end a tenancy where a purchaser made that request, and the purchaser intends in good faith to occupy the rental unit.

There is compensation awarded in the situation where a landlord issues a Two-Month Notice on the purchaser’s behalf. This is covered in s. 51:

- (2) Subject to subsection (3), the . . . purchaser who asked the landlord to give the notice must pay the tenant . . . an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the . . . purchaser . . . does not establish that
  - (a) the stated purpose of ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
  - (b) the rental unit . . . has been 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 . . . 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 . . . purchaser. . . from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
- (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.

The *Residential Tenancy Policy Guidelines*, in particular 50. *Compensation for Ending a Tenancy* provides that extenuating circumstances are those “where it would be unreasonable and unjust for a landlord (*i.e.*, a purchaser) to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner’s control.”

The Purchaser must prove that they accomplished the purpose for which the tenancy ended, within a reasonable period and for at least 6 months’ duration. The burden of proof is on the Purchaser to show this was so.

Here, the Landlord issued the Two-Month Notice on February 26, 2022, on the Purchaser’s behalf as clearly shown in the Tenant’s evidence. The Tenant did not challenge the validity of the Two-Month Notice and moved out on March 25, 2022. On the day after their move out, the Tenant discovered the online ads.

I find the Purchaser did not provide sufficient evidence to show they accomplished the stated purpose for ending that Two-Month Notice. The Purchaser in the initial hearing session described plans changing, forcing them to rent out the rental unit. I find this broad statement confirms that the Purchaser sought new tenants after the Tenant vacated the rental unit. I find the Purchaser confirmed in the initial hearing session that they sought out new tenants. This is counter to the stated purpose on the Two-Month Notice.

From the Tenant’s testimony in the hearing, I find they established that new tenants were residing in the rental unit, by May 2022. I find as fact that the Purchaser had new tenants in place, and this is not accomplishing the stated purpose for ending the tenancy. This certainly shows the Purchaser did not used the rental unit for the stated purpose for at least 6 months’ duration.

I find the evidence shows the Purchaser did not take steps to accomplish the stated purpose of issuing that Two-Month Notice. I find the evidence shows they sought new tenants by late March 2022. I find as fact that the Purchaser issued a Two-Month Notice, ostensibly for their own use of the rental unit, and they did not accomplish that purpose within a reasonable amount of time, or for a six-month duration.

The Purchaser gave no information about extenuating circumstances; therefore, this second part of the issue is not relevant.

I find this is a situation where s. 51(2) applies. For this, the Purchaser must pay the equivalent of 12 times the monthly rent payable under the tenancy agreement. This is the amount of \$36,000 as claimed by the Tenant.

### Conclusion

Pursuant to s. 51 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$36,000. The Tenant must serve the Money Order to the Purchaser as soon as possible. Should the Purchaser fail to comply with this Monetary Order, the Tenant may file it with the Small Claims Division of the Provincial Court where it may be 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 s. 9.1(1) of the *Act*.

Dated: June 9, 2023

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Residential Tenancy Branch