



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNETC

### **Introduction**

This hearing dealt with an application by the tenant for a monetary order for compensation for loss under the *Act*. The tenant testified that he served the landlord with the notice of hearing package by registered mail on September 22, 2022, and filed proof of service documents. Despite having been served the notice of hearing, the landlord did not attend the hearing.

The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

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

Is the tenant entitled to compensation?

### **Background and Evidence**

The tenancy started on September 01, 2010, and ended on July 01, 2022, pursuant to a notice to end tenancy for landlord's use of property. The monthly rent at the end of tenancy was \$425.00 payable on the first of each month.

On April 07, 2022, the landlord sold the rental unit. On April 21, 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 July 01, 2022. The reason for the notice was that the new owner of the property or a close family member, intended to occupy the rental unit.

The tenant testified that the rental unit was attached to another bigger rental unit and both units were housed in a one level home. The tenant rented the smaller unit. The larger unit was rented out separately. Both units were vacated on July 01, 2022.

The tenant testified that he received the last month of rent-free stay and that upon moving out, he visited the rental unit on July 11, July 18, August 04 and August 17, 2022. On each of these four visits, the tenant found that the rental units were unoccupied.

The tenant stated that during his visit on September 03, 2022, he noticed that the units were occupied. He spoke with the occupants. The smaller unit was rented by two room mates and each of them paid \$400.00 for rent. The larger unit was rented for \$1,600.00.

During the tenant's conversation with the occupants, he found that the occupants had moved in on September 01, 2022, after responding to an advertisement, that advertised the availability of the units. Both occupants informed the tenant that they had not seen the landlord occupying either of the rental units.

### **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.

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not accomplish the stated purpose for ending the tenancy within a reasonable period.

In this case, after the tenants vacated both units in the rental property, the landlord advertised the availability of the units at a higher rent. The landlord found new tenants who moved in on September 01, 2022, at a higher rent than what the previous tenants were paying.

During the tenancy, the tenant paid \$425.00 for rent per month and after the tenant moved out, the landlord rented the same unit to two persons who rented the unit as room mates and paid \$400.00 each for rent for a total of \$800.00.

When a 2 month notice is given for “landlord use of the premises”, as occurred in this case, section 51(2)(b) of the Residential Tenancy Act provides that in addition to compensation from the landlord that is equivalent of one month’s rent, if the rental unit is not used for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, 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.

Based on the sworn testimony of the tenant and in the absence of evidence to the contrary, I find:

1. The stated purpose provided in the 2-month Notice was that the landlord or a close family member would occupy the premises.
2. The premises were re-rented two months after the tenant moved out, for a higher rent.

Since the unit was not used for the stated purpose, I find that the landlord must pay the tenant \$5,100.00 which is the equivalent of rent for twelve months.

I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act* for this amount. 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 **\$5,100.00**.

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 01, 2023

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Residential Tenancy Branch