



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      MNETC FFT

### Introduction

This dispute relates to the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for the following:

1. \$21,415 for 12 times the monthly rent pursuant to section 51(2) of the Act,
2. Filing fee.

The tenant attended the teleconference hearing and was affirmed. The hearing process was explained, and they were given an opportunity to ask questions. Thereafter the tenant was provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). I refer to only the relevant evidence related to the findings in this decision.

As the landlord did not attend the hearing, service of the amended Notice of a Dispute Resolution Proceeding dated February 12, 2023 (Notice of Hearing), application and documentary evidence (Hearing Package) were considered. The tenant provided affirmed testimony that the Hearing Package was served on the Purchaser by registered mail on February 13, 2023, and that the package was addressed to the landlord's mailing address listed on the 2 Month Notice to End Tenancy for Landlord's Use of Property dated November 29, 2022 (2 Month Notice). The tenant provided a registered mail tracking number in evidence, RN 641 978 217 CA.

Documents sent by registered mail are deemed served 5 days after mailing pursuant to section 90 of the Act. The Canada Post registered mail tracking website confirms that the landlord signed for and accepted the Hearing Package on February 18, 2023.

Based on the above, I find the landlord has been sufficiently served in accordance with the Act, and that this matter is unopposed by the landlord. The hearing continued without the landlord present as a result pursuant to RTB Rule 7.3.

### Preliminary and Procedural Matter

The tenant confirmed their email address during the hearing and the email address of the landlord, which is listed on the application before me. The decision will be emailed to both parties as a result.

### Issues to be Decided

- Is the tenant entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?
- Is the tenant also entitled to the filing fee?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenant stated that by the end of the tenancy, monthly rent was \$1,776.25 per month. The 2 Month Notice was also submitted in evidence. The tenancy ended based on the 2 Month Notice, which lists the following as the reason to end the tenancy:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)	
<input checked="" type="checkbox"/>	The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).
Please indicate which close family member will occupy the unit.	
<input type="radio"/>	The landlord or the landlord's spouse
<input checked="" type="radio"/>	The child of the landlord or landlord's spouse
<input type="radio"/>	The father or mother of the landlord or landlord's spouse
<input type="checkbox"/>	The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.
<input type="checkbox"/>	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.
<input type="checkbox"/>	The tenant no longer qualifies for the subsidized rental unit.

The tenant confirmed that they vacated the rental unit on January 15, 2023, after providing early notice to end the tenancy pursuant to section 50 of the Act.

The tenant wrote the following in their application:

Landlord has not taken steps toward the purpose for which the Two Month Notice was given. Landlord noted on the #RTB-32 form the child of the landlord or the landlord's spouse would be occupying the unit, but based on our in-person discussion on the move-out date and email correspondence post-move out, the landlord confirmed his brother would be occupying the unit. A brother is not the child of the landlord or the landlord's spouse and is also not considered a close family member, per the Act.

The tenant provided an email in evidence, whereby the landlord confirmed that their brother would be moving into the rental unit.

### Analysis

Based on the undisputed documentary evidence of the tenant and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

**12 times the monthly rent** - Section 51(2) of the Act applies and states:

#### **Tenant's compensation: section 49 notice**

**51 (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if**

**(a) 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**

**(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.**

[emphasis added]

Based on the undisputed evidence before me, I find the landlord failed to attend the hearing to meet the onus of proof which they bear to prove that they used the rental unit in accordance with the Act or to provide evidence of extenuating circumstances. The landlord did neither.

Therefore, I accept the email evidence and the undisputed evidence before me that the landlord used the rental unit for their brother. The Act defines "close family member" as the landlord's parent, spouse or child or the parent or child of the landlord's spouse. RTB Policy Guideline 2A states the following regarding siblings:

“Close family member” means the landlord’s parent, spouse or child, or the parent or child of the landlord’s spouse. A landlord cannot end a tenancy under section 49 so their brother, sister, aunt, niece, or other relative can move into the rental unit.

Given the above, I find the landlord using the rental unit for their brother is not a permitted use when issuing a 2 Month Notice as was in the matter before me for landlord’s use of property.

Therefore, I grant the tenant 12 times the monthly rent of \$1,776.25 pursuant to section 51(2) of the Act, which is **\$21,315**.

In addition, I grant the tenant the **\$100** filing fee as their application was fully successful, pursuant to section 72 of the Act.

### Conclusion

The tenant’s application is fully successful. The tenant has been granted a monetary order pursuant to section 67 of the Act, in the amount of \$21,415. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties. The monetary order will be emailed to the tenant only for service on the landlord. The landlord is cautioned that they can be held liable for all costs related to enforcement of the monetary order, including court costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 12, 2023

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Residential Tenancy Branch