



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      MNETC, FFT

### Introduction

The former Tenants (hereinafter the “Tenant”) filed an Application for Dispute Resolution on June 14, 2022 seeking compensation for the Purchaser via the Landlord ending their tenancy, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 2, 2023 and June 26, 2023.

Both the Tenant, the Landlord, and the rental unit purchaser (hereinafter, the “Purchaser”) attended the conference call hearing. I explained the process and the participants had the opportunity to ask questions and present oral testimony during the hearing.

At the outset of the hearing, and in the reconvened hearing, the parties confirmed they received the prepared documentary evidence of the others. On this basis, the hearing proceeded. I adjourned the hearing on March 2, 2023, to allow the Tenant to serve the Purchaser, who attended the reconvened hearing on June 26, 2023. The Purchaser did not present document evidence in this hearing process.

### Issue(s) to be Decided

- Is the Tenant entitled to monetary 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*?
- Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

### Background and Evidence

The Tenant provided key details about the tenancy on their Application for this hearing and provided a copy of the agreement for evidence. The tenancy started on May 1, 2019. The rent paid as of the end of the tenancy was \$2,301.45.

The Landlord in the hearing reviewed the reason they served the Two-Month Notice to the Tenant on February 24, 2022. The document indicated the reason, on page 2, that all conditions for a sale were finalized, the Purchaser asked the Landlord, in writing, to give this end-of-tenancy notice because the Purchaser/their family member intended in good faith to occupy the rental unit.

The Landlord in the hearing described the Purchaser's request to have the rental unit vacant. On February 18 the Landlord received a subject-free offer, and a deposit for the property on February 23. In effect, this finalized the sale of the property.

The Landlord and Tenant each provided a copy of the Two-Month Notice, signed and served by the Landlord on February 24, 2022. This set the end-of-tenancy date for April 30, 2022.

The Landlord's and Tenant's copy each include the document titled "Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession". This identified the Purchaser by name and address, and was signed by the Purchaser on February 23, 2022. This indicated that "the Buyer(s) hereby request that the Seller(s), as landlord, give notice (the "Tenant Notice") to the tenant(s) . . . terminating the tenancy and requiring the tenant(s) to vacate the Property by 1:00 pm on April 30, 2022."

The Landlord also described the following chain of events:

- on April 28, the Purchaser said they would not be completing the deal, because of "market drop"
- this was a date close to a final document sign date on April 28, and the Landlord inquired with the Purchaser on the title change, and April 25 the Purchaser said they were not completing the sale
- because of this, the Landlord had no choice but to re-rent the place because it was empty, and the Landlord had a mortgage to pay
- the Purchaser put the Tenant under stress, so the Landlord was in a very bad spot, and they obtained new tenants in the rental unit for May 1

In the hearing, the Tenant presented the following:

- they moved out from the rental unit on April 9, earlier than the set end-of-tenancy date
- they received a call from their previous neighbour, around early May, informing them that there were new renters
- the Tenant was not aware that the house was not sold
- the Tenant went to the new tenants and asked for the new owners information
- the Landlord informed the Tenant later that the house was not sold, and the Landlord was renting to new tenants

The Tenant in their evidence presented a record of their inquiries to the Landlord, via text messages, on the new owner's information, to which the Landlord responded that they did not sell the rental unit property. The Landlord also confirmed to the Tenant that they still own the house, and confirmed the sale did not happen, yet had to re-rent.

The Purchaser attended the hearing and stated they were not able to continue with their purchase, due to financial issues and mortgage. They confirmed that they asked the Landlord to serve the documents to end the tenancy, with their intention to move into the rental unit property at that time. They described the market at that time as "all subject free offers", and were told their purchase was going to be fine. They lost the deposit amount in full to the seller; however, the Landlord returned a portion of the deposit to them. They stated that throughout the process the seller knew that the purchase/sale might not complete.

The Landlord rationalized that the Purchaser would not want their purchase to fail, for "who would want to lose their deposit?"

The Tenant responded to say that the Landlord should not have re-rented at their property for at least six months. In any event, the Landlord was compensated because the sale did not happen, for the full deposit amount.

In line with their Application, the Tenant provided the amount of \$27,617.40 as the amount claimed, being the equivalent of 12 months' rent.

### Analysis

The *Act* s. 49 allows for a purchaser to end a tenancy if they or a close family member intends in good faith to occupy the rental unit.

There is compensation awarded in the situation where a landlord issues a Two-Month Notice. This is covered in s. 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 . . . 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 of 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.
- (3) The director may excuse the landlord or, if applicable, 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 landlord or the purchaser, as applicable, from
  - (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
  - (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 onus is on the Landlord, or the Purchaser, to prove that they accomplished the purpose for ending the tenancy.

In this present scenario, I find as fact that the Purchaser requested the Landlord to serve the Two-Month Notice. That is plainly evident on the record, and neither party denied this in the hearing.

I find as fact that the reason indicated on the Two-Month Notice was not accomplished. The Landlord was direct in stating that they had to re-rent after the sale was not completed.

I find the Purchaser, who requested the Landlord as seller to issue the Two-Month Notice, must pay the Tenant the equivalent of 12 times the monthly rent.

The onus was on the Purchaser in the hearing process to present that there were extenuating circumstances that prevented them from accomplishing the reason that the tenancy ended. I find the Purchaser did not present evidence, or describe in their testimony, that extenuating circumstances forced them to cancel the sale, thereby not occupying the rental unit as they stated in their request to the Landlord. They stated only "financial issues"; however, this was vague and non-descriptive.

In the hearing, the Purchaser stated: “the seller [*i.e.*, the Landlord] knew that this might not go through” – I interpret this to mean that there were some uncertainties present in the sale process; however, the Purchaser proceeded with the request to the Landlord to end the tenancy.

As per s. 51(2), I order the Purchaser to pay the Tenant the equivalent of 12 times the monthly rent payable. As indicated by the Tenant on their Application, this amount is \$27,617.40. I grant a monetary order to the Tenant for this amount.

Because the Tenant was successful in their Application, I grant the full amount of the \$100 Application filing fee to them.

### Conclusion

Pursuant to s. 51 and s. 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$27,717.40. I provide the Tenant this Monetary Order for the reasons above. They must serve it to the Purchaser as soon as possible. Should the Purchaser fail to comply with this Monetary Order, the Tenant may file the Order in 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: July 7, 2023

---

Residential Tenancy Branch