



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation related to a Notice to End Tenancy for Landlord's Use of Property pursuant to section 51;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The landlord confirmed service of the tenants' application. The landlord also received the tenants evidence package but stated he only received it 2-3 days prior to the hearing. The tenants confirmed service of the landlord's evidence package.

Although, the tenants' evidence was served late, I allowed it for the purposes of this hearing as the only relevant documents submitted by the tenants were documents that should already have been in the landlord's possession. Much of the tenants other evidence submissions pertained to the condition of the rental unit as it related to their claim for return of the security deposit. However, at the outset of the hearing, the tenants acknowledged they had not provided a forwarding address to the landlord in writing and withdrew their application for return of the security deposit. Therefore, this evidence was no longer relevant to this dispute.

### **Issues**

Are the tenants entitled to a monetary order for compensation relating to a Notice to End Tenancy for Landlord's Use of Property?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background & Evidence

This tenancy began in August 2018. The monthly rent prior to the end of the tenancy was \$900.00.

On January 30, 2022, the landlord served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), pursuant to section 49 of the Act, with an effective date of March 31, 2022. The notice was issued on the grounds that a close family member of the landlord intends to occupy the rental unit.

The tenants vacated the rental unit on March 26, 2022, just prior to the effective date of the Notice.

The tenants are claiming an amount equivalent of twelve times the monthly rent as compensation due to the landlord not using the rental property for use by a close family member after issuing the Two Month Notice.

In support of their claim the tenants submit as follows:

- The landlord initially told them his son was going to occupy the rental unit.
- The landlord's son is not legally old enough to live alone.
- The tenants submitted copies of building permits and a demolition permit the landlord obtained in May 2022.
- The tenants submit the house was demolished by June 2022.

In response, the landlord submits as follows:

- The Two Month Notice was issued for his daughter to occupy, not his son.
- His daughter is in university.
- His original contract was for the demolition to start in September or October 2022.
- However, when after the tenants and his upstairs tenant vacated, he discovered the house was livable.
- It would have cost a lot of time and money to renovate the house to make it livable prior to the planned demolition in September.

### Analysis

Section 51 (2) of the Act provides that if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement. The onus is on the landlord to establish that the stated purpose for ending the tenancy was accomplished.

Pursuant to section 51(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 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.

There was no dispute that the landlord's close family member did not accomplish the stated purpose for ending the tenancy after the effective date of the Two Month Notice. I find the argument put forward by the landlord as to why he was not able to accomplish the stated purpose for ending the tenancy is not an extenuating circumstance. It was the landlord's choice to serve the Two Month Notice before first assessing whether or not the rental unit was livable. The landlord had the tenants vacate only to end up demolishing the house without first occupying it.

I allow the tenants claim and award an amount of \$10,900.00, which is twelve times the monthly rent of \$900.00 plus the \$100.00 filing fee.

### Conclusion

I grant the tenants a Monetary Order in the amount of \$10,900.00. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 17, 2023

---

Residential Tenancy Branch