



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            MNDCT, FFT

### Introduction

This hearing convened as a Tenant's Application for Dispute Resolution, filed on July 19, 2018, wherein the Tenant requested monetary compensation from the Landlord pursuant to sections 51(2) and 67 of the *Act* and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on November 20, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to both parties and that any applicable Orders would be emailed to the appropriate party.

### Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord pursuant to section 51(2) of the *Act*?

2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that he moved into the rental property in the spring of 1993.

The Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use on September 21, 2017 (the "Notice"). The effective date of the Notice was December 31, 2017 and the reasons cited on the Notice were as follows:

"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)."

The Tenant confirmed that the tenancy ended on January 15, 2018.

The Tenant testified that as of July 18, 2018 the rental unit remains vacant. He stated that he goes there every week as he lived there for so long his best friends live in the neighbourhood. He stated that to his knowledge nothing is going on with the property; no demolition has occurred and no one has moved in.

In response to the Tenant's submissions, the Landlord testified as follows.

He confirmed that he did not move into the rental property after the tenancy ended as it is his intention to demolish the property and build a new home. He stated that it was his plan to start building in the summer or fall of 2018. He stated that there have been delays with his designer and the city such that he hasn't been able to begin. He also stated that once the home is built, he intends to reside there and may have a rental unit in the basement. He confirmed that he wants to begin building as soon as possible because every month he is paying a mortgage of \$5,000.00 per month.

The Landlord stated that when the Tenant moved out there was no water in the property.

The Landlord also testified that he attempted to store furniture in the home, however, the home was broken into and the furniture taken. He noted that he was informed by the Tenant that someone broke in and stole some of his furniture.

The Landlord stated that the Tenant illegally entered the house and took photos of the rental property; those photos were entered in evidence by the Tenant.

In reply the Tenant stated that he did not know what the Landlord meant by there being no water. The Tenant also stated that he took photos from the front window and that he never went inside the house.

The Tenant also stated that in February of 2018 he was visiting a neighbour and they saw the window was broken and the door was open. He then called the Landlord to inform him that the property had been broken into. He denied having anything to do with the break-in.

### Analysis

After consideration of the evidence and testimony before me and on a balance of probabilities I find as follows.

On the Application for Dispute the Tenant indicated he sought the sum of \$10,200.00 in monetary compensation representing compensation equivalent to 12 month's rent.

Bill 12 introduced changes to section 51(2) of the *Residential Tenancy Act* and was given Royal Assent on May 17, 2018. The current version of section 51(2) provides that a tenant is entitled to *12 months* compensation, as opposed to 2 months. However as the Notice was issued on September 21, 2017, prior to May 17, 2018, the Tenant in the case before me is only entitled to compensation based on the former version; that is, a maximum of 2 month's rent.

At the time the Notice was issued sections 49 and 51(2) read as follows:

#### **Landlord's notice: landlord's use of property**

**49** (1) In this section:

**"close family member"** means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

**"family corporation"** means a corporation in which all the voting shares are owned by

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

**"landlord"** means

- (a) for the purposes of subsection (3), an individual who
  - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
  - (ii) holds not less than 1/2 of the full reversionary interest, and
- (b) for the purposes of subsection (4), a family corporation that
  - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii) holds not less than 1/2 of the full reversionary interest;

**"purchaser"**, for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

(2) Subject to section 51 *[tenant's compensation: section 49 notice]*, a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

(a) not earlier than 2 months after the date the tenant receives the notice,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if 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.

(5) A landlord may end a tenancy in respect of a rental unit if

(a) the landlord enters into an agreement in good faith to sell the rental unit,

(b) all the conditions on which the sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

(ii) the purchaser 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.

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(a) demolish the rental unit;

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

(c) convert the residential property to strata lots under the [Strata Property Act](#);

(d) convert the residential property into a not for profit housing cooperative under the [Cooperative Association Act](#);

(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

(f) convert the rental unit to a non-residential use.

(7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

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

**51** (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) 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

(b) 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 double the monthly rent payable under the tenancy agreement.

The Landlord issued the Notice pursuant to section 49(3). Notably, section 49(3) uses the word "occupy" not "reside" or "live in". Meaning must be given to the words actually used in the legislation. "Occupy" and "reside" have different meanings. Since the *Act* does not require the

Landlord to “reside” in the rental unit, whether the Landlord actually resided or lived in the rental unit is not relevant.

The *Act* does not define the word “occupy” or “occupied”. Black’s Law Dictionary defines “occupy” as “to take or enter upon possession of; to hold possession of; to hold or keep for use; to tenant; to do business in; to possess; to take or hold possession.”

Based upon the undisputed evidence before me, I find that no other person took possession of the rental unit from the Landlord following the issuance of the Notice. Since no other person took possession of the rental unit for nearly a year after the tenancy ended, I am satisfied that the Landlord *occupied* the rental unit for at least six months starting December 31, 2017 (the effective date of the Notice).

I am satisfied the landlord fulfilled the stated purpose on the 2 Month Notice such that I find the Tenant is not entitled to compensation under section 51(2). Therefore, I dismiss his claim against the Landlord.

#### Conclusion

The Tenant’s claim is dismissed.

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: November 28, 2018

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Residential Tenancy Branch