



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC FF

### Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- 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 acknowledged service of the tenant's application and evidence submissions on file.

### Issues

Is the tenant entitled to a monetary order for compensation for damage or loss?  
Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background & Evidence

The rental unit is a loft in a strata complex. The landlord purchased the unit previously occupied by tenant and took possession on October 1, 2019. The previous owners served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") on July 23, 2019 with an effective date of September 30, 2019. The notice was issued on the grounds that the unit had sold, and the purchaser intended to occupy the rental unit.

The tenant vacated the rental unit on September 30, 2019. Therefore the purchaser and the tenant did not have an actual landlord-tenant relationship but for the purposes of this hearing the respondent purchaser will be referred to as "the landlord".

The tenant is claiming an amount equivalent to twelve times the monthly rent of \$1354.32/month as compensation. The tenant claims the landlord did not occupy the rental unit after taking possession.

The tenant testified that since taking over ownership of the home, the landlord has consistently advertised and rented out the unit on Airbnb. The tenant submitted copies of Airbnb advertisements and reviews in support. The tenant submits that in October 2019 alone, the month after she moved out, there were 9 reviews posted to Airbnb. The tenant submits that by April 2019 there were over 50 reviews. The tenant submits the advertisements also offer discounts for people staying a week or a month at a time. The tenant also submitted a letter from the neighbor residing across from the unit stating the unit has been used as a short-term rental since she vacated.

The landlord testified that he purchased the unit with the intent to occupy it. The landlord testified the unit is his primary residence and he moved in shortly after purchasing it. The landlord testified his mail goes to the rental unit address and his drivers license also reflects this address. The landlord testified that the unit does occasionally get rented out as a short-term rental on Airbnb. The landlord testified he used to travel a lot for work so he would rent it out when he was away. He has since got married, has kid on the way and due to recent travel restrictions has not been travelling. The landlord testified the unit has not had a single stay for months. The landlord testified the neighbors statement that the unit is used as Airbnb majority of the time is not true. The landlord testified that he has never had anyone stay for one month or longer.

The parties testified in regards to whether or not the use of the unit as an Airbnb was legal or permitted by the strata; however, for the purposes of this hearing that is for the most part irrelevant.

### 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.

Section 49(5) of the Act provides a landlord may end a tenancy in respect of a rental unit if the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit.

The onus in this case is on the applicant to establish that the respondent has not utilized the rental unit for the stated purpose. The tenant's submissions of the Airbnb advertisements, reviews and witness letter only support a finding that the unit has been rented on a short-term basis. The tenant submits there have been over 50 reviews as of April 2020; however, these reviews are over a period of 6-7 months. I find that the tenant has presented insufficient evidence to support a finding that the landlord has not occupied the rental unit. I accept the landlord's testimony that he has occupied the unit and that it has only been rented out on short-term basis.

The tenant's application is dismissed without leave to reapply.

As the tenant was not successful in this application, the tenant is not entitled to recover the filing fee paid for this application.

### Conclusion

The tenant's application is dismissed without leave to reapply.

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: May 08, 2020

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Residential Tenancy Branch