



# 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 an application by the tenant for a monetary order for compensation for loss under the *Act* and for the recovery of the filing fee.

Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves. As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of the other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

### **Issues to be Decided**

Is the tenant entitled to compensation?

### **Background and Evidence**

The background facts are generally undisputed. The tenancy started in August 2014. The monthly rent at the end of tenancy was \$1,800.00 due in advance on first day of each month. The tenant moved out on October 31, 2019 pursuant to a notice to end tenancy for landlord's use of property. The tenant agreed that she received from the landlord, compensation in the amount of one month's rent.

On August 02, 2019, the landlord had served the tenant with a two month notice to end tenancy for landlord's use of property, with an effective date of October 02, 2019. The tenant filed a copy of the notice to end tenancy.

The reason for the notice was that the landlord or a close family member of the landlord intended to move into the rental unit. The landlord stated that his daughter intended to move into the rental unit.

The landlord stated that his daughter inspected the rental unit at the end of tenancy and requested her father to have it repaired and renovated. The landlord stated that the unit had extensive damage and it took him a few months to have it restored to a condition that his daughter could move in. The landlord testified that the restoration work was complete in March 2020, at which time his daughter decided not to move in.

The landlord submitted that he listed the unit for sale in April 2020 and as of the date of this hearing (July 28, 2020) the unit had not sold.

The tenant stated that since the landlord did not use the unit for the purpose, he had stated in the notice to end tenancy, she made this application for compensation.

### **Analysis**

Based on the documents filed into evidence and on the testimony of both parties, I find that the landlord served the tenant with a s.49 notice to end tenancy on August 02, 2019 with an effective date of October 02, 2019.

The reason for the notice as check marked on the notice to end tenancy is that the landlord or a close family member intended to move into the rental unit. The landlord agreed that neither he nor a close family member moved into the rental unit as of the date of the hearing. The landlord admitted that he has listed the rental unit for sale.

Pursuant to Section 51 (1) of the *Residential Tenancy Act*, a tenant who receives a notice to end tenancy under Section 49 which is for landlord's use of property is entitled to receive from the landlord the equivalent of one month's rent payable under the tenancy agreement.

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 as applicable under section 49, must pay the tenant an amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement.

In this case, the tenant received the notice to end tenancy for landlord's use of property under Section 49. The notice indicated that the reason for the notice was that the landlord or a close family member intended to move into the rental unit.

The landlord stated that at the time he served that tenant with the notice of hearing, his daughter intended to move into the rental unit, but due to the condition of the unit at the end of tenancy, it took several months to complete the restoration work. The landlord stated that in March 2020, his daughter decided not to move in and therefore the landlord listed the unit for sale.

I find on a balance of probabilities that it is more likely than not that the landlord did not act in good faith when he served the tenant with a notice to end tenancy on August 02, 2019 with an effective date of October 02, 2019.

Based on the testimony of the landlord I find that the landlord's daughter did not move into the rental unit and is now unable to move in as the unit is up for sale. Therefore, I find that the landlord did not accomplish the stated purpose for ending the tenancy under section 49 and accordingly he must pay the tenant an amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement. The monthly rent was \$1,800.00 and therefore the landlord must pay the tenant \$21,600.00 as compensation.

Since the tenant has proven her case, I award her the recovery of the filing fee of \$100.00.

Overall the tenant has established a claim of \$21,700.00. Accordingly, I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for this amount which represents 12 months' rent plus the filing fee. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the tenant a monetary order in the amount of **\$21,700.00**.

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 28, 2020

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Residential Tenancy Branch