



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCT, MNSD, FFT**

### Introduction

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

- A monetary order for damages or compensation pursuant to section 67;
- An order for the return of a security deposit or pet damage deposit pursuant to section 38; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both the landlord and the tenant attended the hearing. As both parties were present, service of documents was confirmed. The landlord acknowledges he received the tenant's Notice of Dispute Resolution Proceedings package, however states he received them late. Despite this, the landlord was willing to proceed with the hearing of the tenant's application stating he did not take issue with timely service of documents. The tenant did not raise any concerns with the receipt of the landlord's evidence.

### Issue(s) to be Decided

Is the tenant entitled to compensation equivalent to 12 months rent for the landlord's failure to take steps to accomplish the stated purpose for ending the tenancy?

Should the tenant's security deposit be returned?

Can the tenant recover the filing fee?

### Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant gave the following testimony. He began living in the rental unit nine years ago when the building was owned by a different landlord. This new landlord took over the building in December 2019. The tenant alleges the landlord wanted to raise his rent from \$800.00 per month to \$1,100.00 per month however the tenant acknowledges he has no written evidence to corroborate this statement. The landlord served him with a Two Month's Notice to End Tenancy for Landlord's Use on December 12, 2019. On December 30<sup>th</sup>, tenant sent the landlord notice that he would move out during the month of January and the tenancy ended when the tenant moved out on January 27, 2020. At the end of the tenancy, the tenant was paying \$840.00 per month and the tenant believes the rental unit was rented out to another tenant at a higher rent after he vacated it.

The tenant testified that the landlord is holding his security deposit in the amount of \$375.00. At the end of the tenancy, the rental unit was left in good condition with the exception of regular wear and tear to be expected after a 9-year rental. The tenant acknowledges that he did not provide the landlord with his forwarding address in writing when he moved out.

A copy of the notice to end tenancy was provided as evidence. The notice provides an effective date of March 1, 2020 and the reasons for ending the tenancy stated were:

- 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) and
- The landlord 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.

On the Two Month's Notice to End Tenancy for Landlord's Use, the named landlords were the landlord named on this application and a numbered company.

The landlord testified that the numbered company is the owner of the rental unit and all the other units in the building. He, in his personal capacity, is the sole shareholder of the company. The landlord testified that the numbered company is not a family

corporation and that the second reason for ending the tenancy stated on the notice was a mistake. The only reason for ending the tenancy was for the landlord to move his eldest son into the tenant's unit so that he could manage the property.

The landlord testified that subsequent to serving the notice to end tenancy upon the tenant, another unit in the building became available. The landlord contacted the tenant on January 7, 2020 and offered the tenant the choice to remain in his unit. The tenant responded that he already paid advance rent and a security deposit to his new landlord and may not be able to accept. On January 8<sup>th</sup>, the tenant emailed the landlord advising the manager at the new place wouldn't refund his advance rent and that he would move out in accordance with his notice. Copies of the email exchange were provided by the landlord.

The landlord and his witness also testified that the tenant's unit was dirty and suffered from disrepair requiring renovating before it could be re-rented. The landlord's witness, the building's property manager, AR testified that renovations were done to the unit throughout February and it was re-rented on March 1<sup>st</sup>. That new tenant did more damage to the unit and she is still fixing the damage caused by that subsequent tenant. The unit remains vacant.

The landlord testified that there were two reason his son didn't move into the rental unit. First, the unit needed renovations and cleaning had to be done to fix damage done by the tenant. Second, the property manager he hired did such a good job of managing the property that he didn't require his son onsite to manage it. His two sons go to the building to inspect it at least twice a month and that is satisfactory to him.

### Analysis

If a landlord gives a notice to end tenancy under section 49 to occupy or have a close family member occupy the rental unit, the landlord or their close family member must take steps to occupy the unit after the effective date of the Notice. The consequences for not using the rental unit for the stated purpose are expressed in section 51(2) of the Act.

Compensation for Ending a Tenancy is explored in Residential Tenancy Branch Policy Guideline PG-50, which states:

### ***Accomplishing the Purpose/Using the Rental Unit***

*Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for*

*at least 6 months. This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.*

*A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.*

The landlord was clear and unequivocal in his testimony. The original intent was for his eldest son to move into the tenant's rental unit and manage the property. The property manager the landlord they hired was doing a good job of managing the property and the landlord felt comfortable with this arrangement, negating the requirement for the son to come live in the building. Visiting the building twice a month was sufficient in the landlord's opinion. Nowhere in the landlord's evidence is there any indication the landlord, the landlord's son or any other close family member ever moved into the tenant's vacated unit.

Section 50 of the Act allows a tenant to end a tenancy earlier than the effective date stated on the landlord's notice to end tenancy. The tenant's right to compensation under section 51 is not affected. Despite the landlord's argument that he asked the tenant to reconsider moving out after being served with the notice to end tenancy, there is no provision under the *Residential Tenancy Act* that precludes the tenant from seeking compensation for the landlord's failure to accomplish the stated purpose for ending the tenancy.

PG-50 states:

***EXTENUATING CIRCUMSTANCES***

*An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation.*

I find that either the landlord changed his mind to have his son move into the tenant's unit or his son decided not to move into the building to manage it. In either case, the ultimate purpose for ending the tenancy, for a close family member of the landlord to occupy it, was not achieved. I find the tenant is entitled to compensation pursuant to

section 51 of the Act at 12 times the rate of rent when the tenancy ended (12 x \$840.00 = \$10,080.00).

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The tenant sought a return of his security deposit but testified he had not given the landlord his forwarding address in writing. Section 38 of the Act requires that the landlord repay the security deposit or make an application against it within 15 days after the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. As the tenant's application is premature, this portion of his application is dismissed with leave to reapply.

Conclusion

I issue a monetary order in the tenant's favour in the amount of **\$10,180.00**.

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: October 27, 2020

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Residential Tenancy Branch