



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction  
Standards

Dispute Codes

MNETC

## **DECISION**

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for Compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property pursuant to sections 51 and 67.

The tenant attended the hearing, and the landlord attended the hearing with her spouse, BM acting as agent ("landlord"). As both parties were present, service of documents was confirmed. The landlord acknowledged being served with the tenant's Application for Dispute Resolution and evidence on April 1, 2021 and the tenant acknowledged service of the landlord's evidence. I find the landlord duly served with the Application for Dispute Resolution on April 1, 2021 in accordance with sections 89 and 90 of the Act.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act.

### Issue(s) to be Decided

Is the tenant entitled to compensation of 12 months rent for the landlord's failure to use the rental unit for a stated purpose for at least six months from the effective date of the Two Month's Notice to End Tenancy for Landlord's Use?

### Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, 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 landlord gave the following testimony. The rental unit is an entire house, and the owner of the rental unit is a numbered company. The numbered company is not a family corporation since the company was started with the named landlord and another person not related to the landlord. The landlord thinks the other person stopped being a director of the numbered company sometime around the time the tenant was evicted, in March or April of 2019, however he does not have all the details of that before him.

The landlord ended the tenancy with the tenant with a Two Month's Notice to End Tenancy for Landlord's Use with an effective date of March 31, 2021. The notice was signed by the property manager company the landlord hired to manage the property. The landlord told their agent that the landlord's mother, father and brother were going to move into the rental unit.

The landlord testified that the mother, father and brother moved in at the beginning of April, 2019 and lived there approximately 3 months until they purchased a place of their own on June 27, 2019. The rental unit remained vacant from June 27<sup>th</sup> onward until December 1 of 2019 when "M", the person living in their own basement, became the tenant of the rental unit. During the period when the house remained vacant, (July to December, 2019) "M" would occasionally attend the rental unit to ensure homeless people did not enter the home or break in and steal appliances. The landlord did not call "M" as a witness for this hearing.

The landlord provided as evidence the letter from his lawyer indicating the mother and father's application to register their new home at the Land Titles Office was accepted. The landlord also provided the tenancy agreement between the landlord and "M" to commence December 1, 2019. The landlord did not provide

any documentary evidence of the mother and father moving into the rental unit for the beginning of April since the bills remained in the landlord's name.

The landlord argues that the tenant served him with the Notice of Dispute Resolution Proceedings the day after the 2 year limitation on serving him with a dispute expired. The landlord argues that for this reason, the tenant is out of time for her application to succeed.

The tenant gave the following testimony. When the tenancy ended, she was paying \$1,450.00 per month in rent. In April of 2019, she went back to the rental unit to retrieve mail and spoke to a person there who said he was renting the garage of the rental unit to do appliance repair. That person told the tenant that "M" (the same person the landlord said lives in his basement) lives in the house. On the tenant's next visit, she spoke to a lady who says she lived in the house with "M".

The tenant questioned why the landlord would choose to house their parents in an old house with a falling apart roof and furnish it for 2 ½ months with new beds and linens when the landlord lives in a large house himself. The tenant also provided as evidence a video make by the previous owner of the house, however the tenant was unable to provide a date for when the video was made.

#### Analysis – landlord's application to dismiss claim due to time limit

I start with the landlord's argument that the tenant's Application for Dispute Resolution Proceedings Package should be dismissed because the tenant did not serve him with the Notice of Dispute Resolution Proceedings package before the last day of the 2 years from when the tenancy ended. He received it on April 1, 2021, while the tenancy ended on March 31, 2019. I turn to section 60 of the Act which states:

#### **60 Latest time application for dispute resolution can be made**

(1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

(2) Despite the [Limitation Act](#), if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).

(3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

Section 60(1) is clear, the application must be made within 2 years of the date that the tenancy ends. The tenant filed her Application for Dispute Resolution on March 31, 2021, the very last date she could do so under section 60 of the Act. Once the application has been filed in accordance with section 60, as it was done in this case, the applicant is obligated to serve the respondent within 3 days of the Notice of Dispute Resolution Proceedings being made available by the Residential Tenancy Branch pursuant to rule 3.1 of the Residential Tenancy Branch Rules of Procedure. As the landlord acknowledges receiving it on April 1<sup>st</sup>, I find the tenant has complied with this rule.

#### Analysis – tenant’s application for section 51 compensation

Section 51 of the *Act* states a tenant who is served with a Notice to End Tenancy for Landlord’s Use (“notice”) pursuant to section 49 is entitled to compensation in an amount equivalent to 12 times the monthly rent if steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or the rental unit is not used for that stated purpose for at least 6 months’ duration, beginning within a reasonable period after the effective date of the notice.

I find the landlord has not used the rental unit for the stated purpose for at least 6 months duration for two reasons. The first reason is because the “landlord” in this case is not an individual but a corporate entity which the landlord clearly testified is not a “family corporation”. A family corporation is defined under section 49 as a corporation in which all the voting shares are owned by one individual, or one individual plus one or more of that individual's brother, sister or close family members. The landlord was unable to testify whether the landlord/company was solely owned by the landlord or together with another unrelated person at the time the notice to end tenancy was served.

Sections 49(3) and (4) of the Act state:

(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.

Section 49 does not include any provision that a corporate entity can end a tenancy for the “landlord” (the company) to occupy it or for a “close family member” of the company to occupy it. Close family members are the individual’s parent, spouse or child or the parent or child of the individual’s spouse. Since the landlord is a company and not an individual, there is no possibility the company can have parents, spouses or children. I find the landlord did not accomplish the stated purpose for ending the tenancy of having the landlord or a close family member of the landlord occupy the rental unit.

Secondly, I find the landlord has not used the rental unit for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice. The landlord clearly testified that the landlord’s parents and brother (or, the parents and brother of a shareholder of the corporate landlord, to be precise) moved into the rental unit in early April of 2019, and moved out of it on June 27, 2019, approximately 3 months later when they purchased their own house.

Residential Tenancy Branch Policy Guideline PG-50 [Compensation for Ending a Tenancy] states at part C:

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

If a landlord gives a notice to end tenancy under section 49, and the stated reason on 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 for at least 6 months.

...

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

Moreover, PG-2A [Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member] states:

***Vacant possession***

Other definitions of “occupy” such as “to hold and keep for use” (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (**see Section E**).

Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.

***6-month occupancy requirement***

The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).

The landlord provided evidence and testimony to prove to me that “M” became the tenant of the rental unit on December 1, 2019. The landlord testified that the rental unit remained vacant between June 27<sup>th</sup> and December 1, 2019. If so, the landlord has failed to meet the obligation to have the rental unit occupied by the landlord or a close family member for the duration of the 6 months as set out in section 51.

For the reasons above, I find the tenant is entitled to the statutory compensation in the amount of \$1,450.00 x 12 (months) = \$17,400.00 pursuant to section 51(2) of the Act.

Conclusion

I issue a monetary order in the tenant’s favour in the amount of \$17,400.00.

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: August 30, 2021

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Residential Tenancy Branch