



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Respondent confirms receipt of the Tenant’s application, notice of hearing and evidence (the “Hearing Package”). The Tenant provides postal evidence for the registered mailing of the Hearing Package on July 19, 2021.

### Preliminary Matter

As the hearing was being ended, the Respondent asks for an adjournment to seek legal advice on what evidence the Respondent should provide for this dispute and for the provision of that evidence.

Rule 7.8 and 7.9 of the RTB Rules of Procedure provides that the arbitrator will determine whether the circumstances warrant the adjournment and will consider the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment. Postal evidence is that the Hearing Package was received by the Landlord on June 17, 2021. The Respondent had over

six months from receipt of the Hearing Package to seek legal advice and provide any supporting evidence they wished. For this reason, I consider that the Respondent had sufficient time to seek advice and prepare for the dispute proceedings and I deny the request for an adjournment.

Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The Tenant states as follows: the tenancy started on April 1, 2020 and ended May 31, 2021. Rent of \$1,725.00 was payable on the first day of each month. The security deposit has been dealt with. The tenancy ended as a result of the Landlord giving the Tenant a two month notice to end tenancy for landlord's use dated March 16, 2021 (the "Notice") The Notice has an effective date of May 31, 2021. The reason stated on the Notice is that the unit was sold, and that the purchaser asked the Landlord in writing, to give the Notice as the purchaser or close family member of the purchase intends in good faith to occupy the rental unit. The Tenant submits that the unit was advertised for greater rent shortly after the end of the tenancy.

The Respondent states as follows: they purchased and took possession of the rental unit. Prior to this possession date they were informed by the seller's agent that although a tenant was in the unit the tenant would be moved out by the possession date of June 1, 2021. The Respondent's parents occupied the unit until it was rented on July 25, 2021. The Respondent never occupied the unit. The Respondent never served any notice or asked anyone to serve any notice to end the tenancy. During the sale the Respondent relied on the real estate agents and in preparing for this hearing the Respondent spoke only with those real estate agents. The Respondent submitted no supporting evidence for this dispute.

### Analysis

Section 51(2) of the Act provides that subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Section 51(3) of the Act provides that the director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as applicable, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
- (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Given the undisputed evidence that the Respondent advertised the unit immediately after the end of the tenancy and did not occupy the unit except for the short time leading up to the new tenancy of July 25, 2021 I find that the Tenant has substantiated an entitlement to the compensation of **\$20,700.00** (12 x \$1,725.00). Although the Respondent's testimony is that they did not provide any letter or notice to anybody, they provided no supporting evidence to contradict the contents of Notice, such a witness letter from the real estate agents handling the transaction. Further I consider that the Respondent knew that they were purchasing a rental unit with a tenant in place at some time during the transaction and should have known of the Act's requirements for ending that tenancy. There is insufficient evidence to find that extenuating circumstances

existed that prevented the occupation of the rental unit as required under the Act and the Respondent is not excused from paying the compensation to the Tenant.

As the Tenant's claim for compensation has been successful, I find that the Tenant is also entitled to recovery of the \$100.00 filing fee for a total entitlement of **\$20,800.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$20,800.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 19, 2022

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Residential Tenancy Branch