



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Code            MNETC

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2).

Tenant SL (the tenant) and landlord GG (the landlord) attended the hearing. The landlord was assisted by counsel JC. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

### Issue to be Decided

Is the tenant entitled to a monetary order in an amount equivalent to twelve times the monthly rent?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties: "Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered."

Both parties agreed the tenancy started in June 2004 and ended on October 31, 2021. Monthly rent when the tenancy ended was \$2,123.00, due on the first day of the month. The landlord collected and returned the security deposit.

Both parties also agreed the landlord served and the tenant received a two month notice to end tenancy for landlord's use (the Notice) on August 15, 2021. The landlord served the Notice because he sold the rental unit and the purchaser asked the landlord to serve the Notice because the purchaser intended to occupy the rental unit.

The tenant submitted a copy of the Notice dated August 15, 2021 into evidence. It states the purchaser BM asked the landlord to serve the Notice because the purchaser intends to occupy the rental unit. The effective date was October 31, 2021.

The landlord submitted the contract of purchase and sale dated July 22, 2021 indicating the purchaser wants vacant possession of the rental unit; the buyer's notice to the seller for vacant possession dated August 14, 2021 and the rental unit's title search dated April 05, 2023 indicating the purchaser is the owner of the rental unit.

The landlord affirmed that he is not responsible for compensation, as the purchaser asked him to serve the Notice and the sale was completed on November 01, 2021.

The tenant affirmed that he had an agreement with the landlord and that the landlord should compensate the tenant.

### Analysis

Sections 49(2) and (5) of the Act state:

(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy

(a)for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

- (i)not earlier than 2 months after the date the tenant receives the notice,
- (ii)the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii)if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

(5)A landlord may end a tenancy in respect of a rental unit if

- (a)the landlord enters into an agreement in good faith to sell the rental unit,
- (b)all the conditions on which the sale depends have been satisfied, and
- (c)the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

- (i)the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
- (ii)the purchaser 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.

Section 51(2) of the Act provides that the purchaser, in addition to the amount payable under subsection (1), must pay an amount that is equivalent of 12 times the monthly rent payable under the tenancy agreement if:

- (a)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
- (b)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.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Per section 51(2) of the Act and Rule of Procedure 6.6, the respondent has the onus to prove, on a balance of probabilities, that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the Notice and that the respondent occupied the rental unit for at least 6 months after the effective date of the Notice.

Based on the uncontested testimony, the Notice and the contract of purchase, I find the tenant submitted this application against the seller, not the purchaser.

Per section 51(2), the purchaser must pay the compensation of 12 times the monthly rent. The tenant submitted this application against the seller.

Thus, the tenant is not entitled to a monetary order under section 51(2) of the Act.

The tenant is at liberty to submit an application against the purchaser.

### Conclusion

I dismiss this application without leave to reapply. The tenant is at liberty to apply against the purchaser.

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: April 19, 2023

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Residential Tenancy Branch