



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”) for a monetary order for money owed or compensation for damage or loss, and the recovery of their filing fee paid for this application. The matter was set for a conference call.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties agreed that they have exchanged the evidence that I have before me in these proceedings.

Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the parties who holds the onus of proof to present their case and evidence first, in this case, the Tenant has applied for compensation under section 51 of the Act, as the landlord has the burden of proving that they used the rental unit for the stated purpose on their notice to end tenancy, the Landlord hold the onus of proof in these proceedings and will present their case and evidence first.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

- Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss pursuant to section 51 of the *Act*?
- Is the Tenant entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that this tenancy began on September 1, 2018, that rent in the amount of \$700.00 was to be paid by the first day of each month, and that at the outset of the tenancy the Tenant had paid a \$350.00 security deposit to the Landlord. The Tenant submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they served a Two-Month Notice to End Tenancy for the Landlord's Use of the Property (the "Two-Month Notice") dated December 6, 2022. The Notice indicated that the Tenant was required to vacate the rental unit as of February 28, 2022. The reason checked off by the Landlord within the Notice was as follows:

- 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)
  - Please indicate which close family member will occupy the unit
    - The landlord or landlord's spouse

The parties agreed that the Tenant moved out of the rental unit, in accordance with the Two-Month Notice as of February 14, 2022, and the Tenant agreed that the Landlord returned the security to the Tenant in accordance with the *Act*. The Tenant and the Landlord submitted a copy of the Two-Month Notice into documentary evidence.

The Landlord testified that when they issued the Two-Month Notice it was their intent to demolish the rental building and build a new house for their son, and that as of the date of these proceedings the rental property had been demolished and the new home was still under construction. The Landlord confirmed that their son had not moved into the rental property before it was demolished, nor had their son moved into the new home as of the date of these proceedings.

The Landlord testified that the Tenant had advised them if they were going to demolish the rental unit that a Four-month notice was required not a Two-month notice. The Landlord testified that they served a Four-Month Notice to End Tenancy for the Demolition of the Rental Unit (the "Four-Month Notice") dated December 31, 2022. The

Landlord testified that they served this Notice by leaving the Notice in a pile of mail on the floor just inside the front door of the rental unit.

The Landlord was asked if they officially withdrew the Two-Month Notice, and the Landlord responded that they believed that it was implied that the Two-Month Notice had been cancelled through their actions of serving the Four-Month Notice.

The Tenant agreed that they had advised the Landlord that they believed they had served the wrong notice to end tenancy, but that they had asked the Landlord to serve the correct notice before December 11, 2022, and that when they did not receive a new Notice by that date, they proceeded to seek out new housing based on the Two-Month Notice.

The Tenant testified that they did not receive the Landlord's Four-Month Notice until mid-January, as they had been out of town travelling when the Landlord dropped it off. The Tenant testified that they had not given permission to the Landlord to withdraw the Two-Month Notice, as they had already started their actions to secure a new tenancy elsewhere.

### Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

Before me, I have an application pursuant to section 51(2) of the Act, which states the following:

***Tenant's compensation: section 49 notice***

*51 (2) 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 Month' duration, beginning within a reasonable period after the effective date of the notice.*

I accept the Landlord's testimony that as of the date of these proceedings, their son had not moved on to the rental property. Section 51(2a) requires the Landlord to use the property for the stated purpose on the Notice for ending the tenancy within a reasonable period after the effective date of the notice. I find the Landlord is in breach of section 51(2a) when after 466 days they have still not started using the rental property for the stated purpose of ending the tenancy on the Two-Month Notice.

I also accept the Landlord's testimony that they have destroyed the rental unit and are in the process of building a new house on the rental property. I find this to have been a breach of section 51(2b) of the *Act*, which required the Landlord to use the property for the stated purpose on the Notice for at least six Month, which is now impossible possible, as the rental unit has been demolished.

I acknowledge the Landlord's testimony that, they had made a mistake when they issued the Two-Month Notice and that they had also issued a Four-Month Notice to end tenancy for demolition, on December 31, 2022. Based on the Landlord's testimony, they have clearly complied with the Four-Months Notice they issued.

The Landlord submitted that the Two-Month Notice was cancelled by their actions of serving the Four-Month Notice. The Residential Tenancy guideline #11 Amendment and Withdrawal of a Notice to End Tenancy, speaks to how a notice to end tenancy can be legally withdrawn, stating the following:

**C. WITHDRAWAL OF NOTICE TO END TENANCY**

"A landlord or tenant cannot unilaterally withdraw a notice to end tenancy.

A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given.

A notice to end tenancy can be waived only with the express or implied consent of the landlord or tenant (see section D below).

It is recommended that withdrawal of a notice to end tenancy be documented in writing and signed by both the landlord and the tenant.

**D. WAIVER OF NOTICE AND NEW OR CONTINUED TENANCY**

Express waiver happens when a landlord and tenant explicitly agree to waive a right or claim. With express waiver, the intent of the parties is clear and

unequivocal. For example, the landlord and tenant agree in writing that the notice is waived and the tenancy will be continued.

Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant.

For example, if a landlord gives a notice to end tenancy, a landlord may accept rent from the tenant for the period up to the effective date of the notice to end tenancy without waiving the notice. However, if the landlord continues accepting rent for the period after the effective date but fails to issue rent receipts indicating the rent is for “use and occupancy only,” it could be implied that the landlord and tenant intend for the tenancy to continue. Intent may also be established by evidence as to:

- whether the landlord specifically informed the tenant that the money would be for use and occupancy only;
- whether the landlord has withdrawn their application for dispute resolution to enforce the notice to end tenancy or has cancelled the dispute resolution hearing; and
- the conduct of the parties.”

[Reproduced as written, underline added by my Arbitrator for emphases]

The Landlord has submitted that they believed there was implied consent from the Tenant to withdraw the Two-Month Notice and proceed to end the tenancy on the Four-Month Notice.

As stated above, implied consent is only accepted in cases where the Tenancy continues. In this case, it was still the intention of this Landlord, to end this tenancy, just under a different Notice; therefore, I find that clear consent from the Tenant was required to withdraw the Two-Month Notice.

The Tenant has testified that they never gave consent to the Landlord to withdraw the Two Month Notice that I have before me in these proceedings. As stated above, the Landlord needed to obtain permission for the Tenant to withdraw this Two-Month Notice. I have reviewed all of the documentary evidence that has been submitted to these proceedings, and I find that there is insufficient evidence before me, to show that the Tenant had given consent to the Landlord to withdraw this Two-Month Notice.

Therefore, I find that the Two-Month Notice was still in effect when this tenancy ended and that the Landlord had an obligation to use the rental unit for the stated purpose on the Two-Month Notice.

Consequently, pursuant to section 51 of the *Act*, and as I have already determined that the Landlord had breached section 51(2a) and 51(2b) of the *Act*, I find that the Tenant has successfully proven they are entitled to compensation due to the Landlord's breach of the *Act*. I award the Tenant compensation in the amount of **\$8,400.00**, consisting of the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

I grant the Tenant a monetary order in the amount of \$8,500.00, consisting of \$8,400.00 in compensation and \$100.00 in the recovery of the filing fee paid for these proceedings.

### Conclusion

I grant the Tenant a Monetary Order in the amount of \$8,500.00. The Tenant is provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: April 18, 2023

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Residential Tenancy Branch