



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, MNDCT

### Introduction

This hearing addressed the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order as compensation for damage or loss under the *Act* pursuant to sections 51 and 67 of the *Act*; and
- a return of the filing fee from the landlord pursuant to section 72 of the *Act*.

Both tenants, the landlord NN, his legal representative CP, the new purchaser JG and the original purchaser SG attended the hearing. All parties present were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The new purchaser also acted in the capacity of interpreter for his father SG.

The tenants testified the landlord NN and new purchaser JG were served the Notice of Dispute Resolution together with the evidentiary package via Canada Post registered mail on December 11, 2019. The landlord NN and purchaser JG confirmed receipt of the registered mailing. I find that this satisfied the service requirements set out in sections 88 and 89 of the *Act*.

The tenants' confirmed receipt of the landlord and the purchaser's evidentiary package. All parties are found to have been served in accordance with the *Act*.

### Amendment

In the tenant's application in the Notice of Dispute Resolution, the names of the parties are incorrectly recorded as the respondents. Based on a review of all applicable documentation and testimony of the parties. I find it would be reasonable to amend the names of the applicants as NN (landlord) and JG (new purchaser) as parties to the proceedings and omit SG as a party in this hearing.

### Issues to be Decided

Are the tenants entitled to a monetary award for compensation for damage or loss pursuant to sections 51 and 67 of the *Act*?

Are the tenants entitled to recover the filing fee pursuant to section 72 of the *Act*?

### Background and Evidence

The tenants provided testimony that this tenancy began on July 15, 2018 and confirmed that their monthly rent at the end of the tenancy was \$2,300.00. The tenants did not pay a security or a pet deposit to the landlord.

The tenants were served with the 2 Month Notice to End Tenancy by the landlord NN on September 9, 2019. The tenants did not dispute the 2 Month Notice to End Tenancy and provided the landlord with a written ten-day notice and vacated the rental unit on October 2, 2019. The tenants received the equivalent of one month's rent as compensation from the landlord NN.

The landlord NN affirmed in testimony that no security or pet damage deposit was provided by the tenants, despite them owing a dog, as it was considered to be a short-term rental. The tenants were in the process of selling their property on the "Island" and the agreement between the parties was that the landlord was to proceed with the sale and marketing of the rental property.

The tenants are seeking a monetary award of \$27,700.00 pursuant to section 51(2) of the *Act* which provides for tenants to receive the equivalent of twelve months rent compensation should the property not be used for the reasons cited on the Notice to End Tenancy.

The reason cited on the 2 Month Notice was listed as, "All the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit."

The new purchaser JG provided testimony that his father SG, who was the original purchaser, had attempted to purchase the property on September 8, 2019 but his father voided the contract and the offer collapsed as the current tenants refused to sign a

mutual agreement. The new purchaser JG confirmed that his father found a suitable property in the neighbouring area. The new purchaser JG affirmed that both himself and his father communicated to all the parties in writing that their intention was to demolish the rental property and build a new residence.

The landlord's legal representative stated that the original purchaser SG had reneged on the sale after having completed some of the sales documents. The landlord's representative argued that the property market was slow and that they were contacted by the purchaser SG who sought to void the purchase and withdrew the contract and purchased elsewhere.

The landlord NN affirmed that he had made an error by allowing the tenant's time to find a rental place to live. The landlord affirmed that he allowed the tenants more time to find a rental unit and was in constant communication with the tenants by emails. The landlord affirmed that after the tenant's vacated on October 2, 2020 he received a call from the realtor to ascertain if the property was still available.

The new purchaser JG affirmed that on October 4th, 2019, he sent in a subject-free offer requesting vacant possession on November 21, 2019, and the seller NN accepted. He affirmed that the contract stated "seller warrants that the property is vacant and there is no tenancy agreement existing when this contract of purchase and sale becomes firm"

The sale of the rental property was completed on October 21, 2019. The land registry documents submitted in evidence indicate that the title was transferred over to JG as the new purchaser and owner of the property in November 2019. The purchaser JG affirmed that his father had already purchased a property and hence he decided to purchase the property instead.

The landlord NN testified that he was in constant contact with the tenants "every step of the way" and referred to an email dated September 14, 2019. The email is a reply from the tenants stating "we will not be perusing the 12-month rental compensation, as we had never even considered that route"

The tenant RM testified that the landlord NN requested them to sign a Mutual End to Tenancy in September 2019, but they refused to do so, as they did not intend to move as his wife was pregnant and the baby was due in November 2019.

The tenant RM affirmed that on September 13, 2019, he received an email from the landlord NN notifying him that the sale did not go through and that the offer had expired.

The landlord NN affirmed that he had not acted in bad faith and on advice, had provided the tenants with the one-month compensation and additional strong references in order that they could find suitable rental accommodation. He affirmed that the tenants had not suffered a loss as they had found good accommodation at a lower price.

Furthermore, the landlord submitted that the tenants approved and had knowledge of the sale when they forwarded him an email date September 14, 2019 that they had no intention to submit a 12 month claim for compensation

The tenants presented submissions and evidence related to the fact that the sale of the property was voided and that the landlord continued to sell the property to the new purchaser despite their objections and request to stay longer in the rental unit.

The tenants vacated the rental property on October 2, 2019 and the contract for the purchase of the property was completed with the new purchaser on October 21, 2019.

### Analysis

The tenants have applied for compensation in addition to the equivalent of one month's rent they have already received because they believe, as stated in their submissions that the landlord did not end the tenancy in good faith.

Section 51(2) of the *Act* states, "if the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant 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 with a reasonable period after the effective date of the notice."

After having considered the testimony of both parties and following a close review of all evidentiary documents submitted by all the parties, I find the landlord NN and the new owner JG provided detailed evidence why they could not complete the sale of the property until October 21, 2019, therefore, should be excused from paying the 12 months compensation as per section 51(3) of the *Act*.

This section states, “The director may excuse the landlord from paying the tenant the amount required if, in the director’s opinion, *extenuating circumstances* prevented the landlord from (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or (b) using the rental unit for that stated purpose for at least 6 months’ duration, beginning within a reasonable period after the effective date of the notice.”

Residential Tenancy Policy Guideline #50 does not make a reference to the good faith requirement; however, an Arbitrator must consider whether reasonable steps were taken to accomplish the purpose for ending of the tenancy.

“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.” While no definitive list is presented in this Policy Guideline, I find the landlords NN evidence and the purchaser SG testimonies persuasive that the landlord was stopped from accomplishing the purpose related to the issuance of the 2 Month Notice.

The tenants were aware of the landlord’s intention when they moved into the rental unit because it relates to the purpose for ending the tenancy. As per sections 51(2) and 51(3). I must consider if reasonable steps were taken to accomplish the purpose for ending the tenancy and if extenuating circumstances prevented the accomplishment of this purpose.

The purpose for ending the tenancy was so that the landlord NN could sell his property to the original or new purchaser JG. Both the landlord and new owner provided a chronology of events that led to the issuing of the Notice to End Tenancy and the sale of the rental property. Both submitted evidence in relation to the sale transaction of the rental unit.

The landlord and new purchaser SG affirmed and presented evidence that the intention of the parties was for the JG’s father to originally purchase the property, until a change in circumstances prevented him from doing so and the fact that the tenants refused to sign a copy of the mutual agreement to end tenancy.

The landlord NN affirmed in testimony that the tenants were informed verbally and by emails from the date when they moved in that the tenancy was to be a short-term rental and that the property was going to be marketed and sold.

On September 7, 2019 the landlord NN emailed the tenants informing them of the sale. “despite the market dropping, letting you know” to which the tenant’s responded “we figured we were in the clear, as of the end of August, but understand the situation” and “that we are on the Island until September 30, 2019 as Lydia is getting her hours”

On September 17, 2019, the tenants email the landlord NN informing him that in response to your Two-Month Notice to End Tenancy, we are informing you that we will be vacating the property early. The tenants vacated on October 2, 2019.

The legal representative affirmed that the tenants were aware of every step of the process of the sale and marketing of the property. At the beginning of the tenancy, the tenants initialled the tenancy agreement in section 13 and confirmed that they would allow the listed property to be shown to prospective purchasers with four hours notice.

I find the landlord presented a significant amount of evidence that this sale was genuine and fell through because the original purchaser voided the sale. This was a detriment to the landlord NN because he lost a genuine sale. I find the testimonies of the landlord NN and the new purchaser SG credible that they proceeded with the sale a few weeks later due to a change in circumstances and that the rental property was finally sold on October 21, 2019.

I accept the landlord’s NN evidence that all steps had been taken to execute a sale of the property as detailed during the hearing. The evidence supported the landlords’ and the new purchaser’s SG testimony that the original buyer reneged on the sale through no fault of the seller. I therefore find the landlord is entitled to be excused from paying 12 month’s compensation pursuant to section 51(3) of the *Act*.

For these reasons, I dismiss the tenants’ application without leave to reapply. As the tenants were unsuccessful in their application, I decline the filing fee pursuant to section 72 of the *Act*.

### Conclusion

The tenants’ application is dismissed without leave to reapply.

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: June 23, 2020

---

Residential Tenancy Branch