



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT

### Introduction

This hearing convened as result of a Tenants' Application for Dispute Resolution, filed on June 9, 2020, wherein the Tenants requested monetary compensation from the Landlords pursuant to sections 51(2) and 67 of the *Residential Tenancy Act* (the "Act").

The hearing of the Tenants' Application was scheduled to teleconference at 1:30 p.m. on October 5, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

The Tenants brought a prior Application against the Property Managers and a hearing occurred on April 16, 2019. Although the Notice to End Tenancy was signed by the Property Managers in June of 2018, the Arbitrator accepted the Property Managers testimony that the Landlords had dismissed the Property Managers in April of 2018.

In furtherance of the April 16, 2019 Decision the Tenants named the Property Owners as Landlords in the Application before me.

Issue to be Decided

Are the Tenants entitled to monetary compensation from the Landlords pursuant to section 51(2) of the *Act*?

Background and Evidence

This tenancy began December 8, 2019. Monthly rent was payable in the amount of \$1,900.00. The tenancy ended on August 22, 2018.

The Landlord issued the 2 Month Notice on June 29, 2018. The reason cited on the Notice was that the property had sold and the new owners wanted vacant possession.

The Tenant, L.C., testified that the property had not sold at the time the Notice was issued, and in fact sold some time after June 29, 2018.

The Tenant also testified that after receiving the Notice, and on July 18, 2018, they received a notice from the Property Managers indicating they wished to show the rental unit to possible *tenants* on July 21, 2018 suggesting the property had not sold but was going to be re-rented. The Tenant confirmed that they were not present on July 21, 2018 when the property was shown as the property managers asked them to leave the rental unit during the showing.

The Tenant stated that on July 27, 2018 there was an advertisement for the home to be sold, despite the fact they had already received the Notice indicating it was in fact already sold.

The Landlord responded to the Tenants' claims as follows. She confirmed that her Property Managers issued the Notice on June 29, 2018. She stated that they had an offer on June 10, 2018, the buyer paid a deposit on June 22, 2018, however that offer later collapsed. She stated that they had several people "affirming the price" that they wanted which led the Landlords to believe that the property would sell quickly. She further stated that because of all the interest, the Property Management company issued the Notice.

The Landlord confirmed that they did not have a confirmed sale at the time they issued the Notice. She stated that they relied on the Property Managers advice and expertise in this regard.

The Landlord stated that on July 24, 2018 she accepted an offer for \$495,000.00 and the completion date for the sale was September 1, 2018, which she noted was 9 days after the effective date of the Notice.

In terms of the Notice advising the Tenants that they were showing it to prospective tenants, the Landlord stated that they checked the box for tenants, as there was no box for showing to prospective sellers.

### Analysis

Section 49(5) allows a Landlord to end a tenancy in the event of the sale of the rental unit and reads as follows:

- 49 (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 provides a tenant with compensation in the event they receive a notice pursuant to section 49 and reads as follows:

**51** (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1)A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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

(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.

(3) 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 the case may be, 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.

In order to determine whether the Tenants are entitled to compensation pursuant to section 51(2) I must determine whether the Landlords took steps to accomplish the stated purpose for ending the tenancy or whether the property was in fact used for that purpose. If steps are not taken, or the property is not used for the stated purposes, I must then determine whether *extenuating circumstances* prevented this.

In the case before me I find the Landlords took steps to accomplish the stated purpose and in fact the rental unit was sold shortly after the effective date of the Notice.

The Tenants argue that the property was not sold at the time the Notice was issued as required by section 49(5). I find this relates to the validity of the Notice itself. The Tenants had the right to apply for a cancellation of the Notice; however, they did not do so within the legislated timeframe of 15 days after its issuance.

While the property was not sold to the original purchaser and may have resulted in a cancellation of the Notice had the Tenants applied to dispute it at the material time, the property was in fact sold such that it was used for the stated purpose. This is not a

case where the original sale collapsed and the Landlords re-rented the property for a higher rent.

I therefore dismiss the Tenants' claim for monetary compensation pursuant to section 51(2) of the *Act*.

Having made this finding, there is no need for me to consider and determine whether extenuating circumstances prevented the Landlord from selling the property, which was the reason for issuing the Notice.

### Conclusion

The Tenants' application for compensation pursuant to section 51(2) of the *Act* is dismissed.

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: October 27, 2020

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Residential Tenancy Branch