



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a monetary order for money owed pursuant to section 51 of the Act, and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

### Procedural matter

The tenancy ended on October 16, 2019, based on an undisputed notice to end the tenancy. I note the landlords submits in their written submission that the tenants did not dispute the notice to end tenancy and are out of time to do so now. However, that is not the issue at today's hearing.

The issue for me to consider at today's hearing, can only occur after the tenancy has ended, and that is, did the landlord accomplish the reasons stated in the notice to end tenancy pursuant to section 51 of the Act. Therefore, I find the tenants had two years from when the tenancy ended to make this application pursuant to section 60 of the Act. I find the tenants application was made within the statutory time limit.

### Issue to be Decided

Are the tenants entitled to compensation for money owed?

### Background and Evidence

The tenancy began in 2014. The current rent of \$2,625.03 was payable on the first of each month.

The parties agreed that the tenants received a Four Month Notice to End Tenancy for Demolition, Renovations, Repairs or Conversion of Rental Unit (the "Notice"), issued on July 19, 2019. The reason stated in the Notices was that I am ending your tenancy because I am going to perform renovations or repairs that are so extensive that the rental unit must be vacant. The planned work states renovate the 3<sup>rd</sup> floor and gardens, the detailed section is blank.

The tenant CM testified that the landlord did not carry out any work that was so extensive that required them to vacate. The CM stated that the landlord just completed some minor repairs, such as replace the flooring, repair the plaster, and added or changed the lighting. CM stated that this work could have been done while they lived in the rental unit as it did not have any impact on the main part of the rental unit.

The tenant CM testified that they accepted the Notice and vacated the premise on the basis that extensive repairs were to be done, not minor cosmetics. CM stated that they vacated the property on October 16, 2019, and the landlord had sold the house in February 2020, and the new owners to possession of the property on April 7, 2020.

The landlord testified that tried to sell the property in July of 2019 and they could not find a purchaser as the tenants were interfering. The landlord stated they should have served the tenants with a One Month Notice to End Tenancy for Cause. However, they decided to issue the Notice, which is the subject of this hearing.

The landlord testified that at the time they issued the Notice the plan was that they were going to turn the 3<sup>rd</sup> floor into a master suite, which included adding a bathroom. The landlord stated that they would have needed permits for this renovation; however, they had not applied for the permits at the time the Notice was issued.

The landlord testified they issued the Notice; however, their general contractor retired, and they were unable to find another contractor to do this renovation. The landlord testified that they did change the flooring, repair the plaster on the walls and did some electrical work to the 3<sup>rd</sup> floor.

## Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

### **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**

**(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 this case, the landlords ended the tenancy on the basis that they were going to perform renovations or repairs that are so extensive that the rental unit must be vacant.

The evidence of the landlord was that the original plans was to convert the 3<sup>rd</sup> floor into a master suite, which included adding a bathroom. The landlord stated that permits would have been required; however, they issued the Notice without having those permits.

The evidence of the landlord was that their general contractor retired, and this renovation was unable to be done. So, they changed the flooring, repaired the plaster, added lighting, and then sold the property.

In this matter, I find the landlords breached the Act when they issued the Notice, knowing that they would need permits for the required work and stating no permits were required on the Notice. Any permits must be obtained prior to issuing the Notice.

Further, I find that the 3<sup>rd</sup> floor was not renovated to an extent that required vacant possession as only minor cosmetic work was done, such as replacing the flooring. A landlord cannot simply make small cosmetic repair, such as to replace flooring and expect that this will meet the repair provisions of "so extensive" that vacant possession is required. Flooring, wall repairs, and lighting do not require vacant possession. I find the landlords have breached the Act, when they did not complete any extensive repairs or renovation to the rental unit that required vacant possession. I am further satisfied that the landlords breached the Act, when they sold the property on April 7, 2020, as this date was within six months of the tenancy ending.

While I accept the landlords', original plan may have been to convert the 3<sup>rd</sup> floor into a master suite, that plan was not done. I am not satisfied that there was any extenuating circumstance that prevented the landlords from accomplishing the task. Except for the landlords' lack of due diligence and poor planning, as it was their responsibility to have hired a contractor that was available and had all the permits prior to issuing the Notice. Therefore, I find in my opinion, I cannot excuse the landlords from paying amount under section 51 of the Act.

In light of the above, I find the landlords did not meet their obligations under the Act. I find that due to the landlords breach of the Act, that the tenants are entitled to the equivalent of 12 months of rent \$2,625.03 x 12 for the total amount of **\$31,500.36**.

I find the tenants have established a total monetary claim of \$31,600.36, comprised of the above amount and to recover the \$100.00 cost of the filing fee. This order may be filed in the Provincial Court and enforced as an order of their court. The **landlords are cautioned** that costs of such enforcement are recoverable from the landlords

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#### Conclusion

The tenants' application for a monetary order is granted.

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: November 12, 2020

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Residential Tenancy Branch