



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC

### Introduction

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

- a monetary order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51.

The landlord and the two tenants, tenant KD ("tenant") and "tenant PDZ," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 40 minutes.

At the outset of this hearing, I informed both parties that they were not permitted to record the hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules"). The landlord and both tenants all affirmed under oath that they would not record this hearing.

During the hearing, I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make decision. Neither party made any adjournment or accommodation requests.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

The landlord confirmed that she did not provide any documentary evidence for this hearing. She claimed that she gave birth to a baby, so she did not have time to submit evidence, even though she received the tenants' application in early March 2021. She said that she could get letters from her neighbours, showing that she did not re-rent the rental unit to new tenants but that she was doing renovations. The landlord asked if she could submit evidence after the hearing, at a later date. I denied the landlord's request to submit late evidence after the hearing. I informed her that she had ample time from receiving the tenants' application in early March 2021 to the date of this hearing on July 12, 2021, to submit evidence. The landlord confirmed her understanding of same.

The tenant confirmed personal receipt of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated June 1, 2019 ("2 Month Notice") on the same date. The landlord confirmed the above service method and date. In accordance with section 88 of the *Act*, I find that both tenants were duly served with the landlord's 2 Month Notice on June 1, 2019.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to remove the name of the landlord's former first name, as the landlord confirmed her legal name change during this hearing. Both parties consented to this amendment during this hearing.

#### Issue to be Decided

Are the tenants entitled to a monetary order for compensation under section 51(2) of the *Act*?

#### Background and Evidence

While I have turned my mind to the tenants' documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 1, 2019 and ended on July 31, 2019. Monthly rent of \$1,500.00 was payable on the first day of each month. A security deposit of \$750.00 was paid by the tenants and the landlord returned the full deposit to the tenants. A written tenancy agreement was signed by both parties. The rental unit is the basement suite of a house, where the landlord occupies the upper suite of the same house.

Both parties agreed to the following facts. The tenants vacated the rental unit, pursuant to the 2 Month Notice. A copy of the 2 Month Notice was provided for this hearing. The effective move-out date on the 2 Month Notice is July 31, 2019. The reason indicated on the 2 Month Notice is:

- *All of 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 tenants seek compensation under section 51(2) of the Act for twelve months of rent compensation of \$1,500.00, totaling \$18,000.00. The tenants claim that because the rental unit was not used for the purpose on the 2 Month Notice, they are entitled to compensation from the landlord. The landlord disputes the tenants' application.

The tenant testified regarding the following facts. The landlord said that she would sell the house and it was sold prior to May 31, 2019, before the 2 Month Notice was issued to the tenants. People came to view the rental unit. The landlord did not provide proof to the tenants of the purchaser asking, in writing, to move into the rental unit. There is no proof of the sale of the house by the landlord. Two weeks before the tenants were given the 2 Month Notice, the landlord sent a text message to the tenants asking if the landlord's aunt could view the rental unit, at the same time that the landlord was talking about selling the house. Both tenants refused entry because a 24-hour notice was not provided by the landlord. On July 31, 2019, the landlord sent a text message to the tenants asking when they were moving out because people were waiting with their U-Haul to move into the rental unit. The landlord did renovations and the landlord's aunt moved into the rental unit after the tenants moved out, as confirmed by the landlord in text messages to the tenants. The landlord did not issue a four-month notice to end tenancy to the tenants to renovate the rental unit. The landlord's close family member did not move into the rental unit because the landlord's aunt moved in.

The landlord testified regarding the following facts. The tenants misunderstood the landlord because English is not her first language, as it is for the tenants. The landlord never had a problem with the tenants, they were good tenants, and she was a good landlord. She provided a positive reference for the tenants to move into a new rental unit. On May 29, 2019, the landlord accepted an offer for the sale of the house. The buyers wanted use of the whole house, including the basement. The landlord's realtor told the landlord to issue the 2 Month Notice to the tenants. The landlord did not

receive a written notice from the buyers to move into the rental unit. The landlord gave one-month free rent to the tenants, during their last month of tenancy. At the last minute, about one to two days before the tenants moved out, the landlord was told that the buyers were not approved for a mortgage, so the sale was “in jeopardy.” The landlord wanted to put the house back on the market, but her realtor said it was an old house and insurance would not approve it for the market, so the landlord had to do renovations. The landlord told the tenants about what happened, but it was too late for them to stay, because they had already found a new place and the landlord had to complete renovations to the rental unit anyway. The landlord never re-rented the unit to new tenants. The landlord’s aunt never moved into the rental unit. The rental unit stayed empty and the landlord is still completing renovations to it, which began around August 18, 2019. The landlord’s mother moved into the upper suite of the house with the landlord. The landlord’s mother’s belongings were at the landlord’s aunt’s house, so these items were moved into storage in the rental unit, along with the landlord’s aunt’s items, since the landlord’s aunt sold her own place. There is no kitchen or bathroom at the rental unit because of renovations that the landlord is still completing. The landlord’s husband lost his job due to the covid-19 pandemic, so only half of the renovations have been completed in the rental unit.

### Analysis

Section 49(5) states the following with respect to the 2 Month Notice:

- (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* establishes a provision whereby tenants are entitled to a monetary award equivalent to twelve times the monthly rent if the landlord does not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of

the Act. Section 51(3) of the Act states that an Arbitrator may excuse the landlord or purchaser from paying this compensation if extenuating circumstances exist.

Sections 51(2) and (3) state as follows:

*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.*

Residential Tenancy Policy Guideline 50 states the following, in part, with respect to extenuating circumstances:

#### ***E. EXTENUATING CIRCUMSTANCES***

*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. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:*

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.*
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.*

- *A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.*

*The following are probably not extenuating circumstances:*

- *A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- *A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations.*

I make the following findings, on a balance of probabilities, based on the testimony of both parties and the tenants' written evidence.

The following facts are undisputed, as the landlord stated them during this hearing. I find that the tenants vacated the rental unit on July 31, 2019 and received one-month free rent compensation, pursuant to the 2 Month Notice. I find that all the conditions on which the sale of the rental unit depended, were not satisfied. I find that the landlord did not receive written notice from the purchasers, to issue the 2 Month Notice to the tenants, because the purchasers or a close family member intended in good faith to occupy the rental unit.

The tenants provided two pages of a contract of purchase and sale, dated June 10, 2019 ("CPS"), that they received from the landlord. The landlord did not dispute this document. The CPS is dated after the landlord issued the 2 Month Notice to the tenants on June 1, 2019. At clause 2 on page 1, the CPS states that a deposit will be paid after "final subject removal." At clause 4 on page 4, the CPS states that the sale completion date is July 25, 2019. At clause 5 on page 4, the CPS states that the buyer will have vacant possession of the rental unit on July 26, 2019, that the rental unit is "vacant," and there are no references to any existing tenancies.

Therefore, the landlord issued the 2 Month Notice before all the conditions on which the sale depended were satisfied, and before the CPS date of June 10, 2019. The landlord did not receive or provide any written document from the purchasers to issue the 2 Month Notice for them or a close family member to occupy the rental unit. Both the 2 Month Notice and section 49(5) state that the 2 Month Notice can only be issued if the purchaser asks the landlord, in writing, to issue it for moving in, so it cannot be a verbal agreement.

I find that the landlord failed to show extenuating circumstances prevented her from using the rental unit for the purpose in the 2 Month Notice. Although the landlord

claimed that the mortgage was not approved for the purchasers, the landlord did not notify the tenants that they could remain at the rental unit and she did not revoke the 2 Month Notice prior to the tenants moving out. The landlord said she was notified about the mortgage issue prior to the tenants moving out on July 31, 2019. The tenants moved out of the rental unit on July 31, 2019, almost two years prior to this hearing date on July 12, 2021. The landlord stated that she has been renovating the rental unit since August 18, 2019, a period of almost two years. The landlord testified that the tenants could not remain at the rental unit because she had to renovate it, to put it back on the market for sale.

Therefore, I find that the landlord breached sections 49(5)(c) and 51(2)(b) of the *Act*. I find that the tenants are entitled to twelve times the monthly rent of \$1,500.00, under section 51 of the *Act*, totalling \$18,000.00, from the landlord. I issue a monetary order to the tenants against the landlord.

### Conclusion

I issue a monetary Order in the tenants' favour in the total amount of \$18,000.00, against the landlord. 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: July 12, 2021

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Residential Tenancy Branch