



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC, FFT

### Introduction

On March 21, 2021, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “Act”) and seeking recovery of the filing fee pursuant to Section 72 of the Act.

Both Tenants attended the hearing. W.C., the owner of the rental unit, attended the hearing as well, with H.H. attending the hearing as an agent for him. As all parties agreed that W.C. was the owner of the rental unit, and the Landlord as defined by the Act, the Style of Cause has been amended to reflect this change.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenants advised that they served the Notice of Hearing and evidence package to the Landlord by registered mail on March 13, 2021, and H.H. confirmed that the Landlord received this package. T.F. stated that he did not check to see if the Landlord could view their digital evidence prior to sending it pursuant to Rule 3.10.5 of the Rules of Procedure (the “Rules”). Furthermore, they did not submit a description of their video

evidence or any indication of key points that were relevant in each video or a statement as to the significance of each video file, pursuant to Rule 3.10.1 of the Rules. However, H.H. confirmed that the Landlord was able to view the digital evidence.

Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the Act, I am satisfied that the Landlord was duly served the Notice of Hearing and evidence package. Despite the Tenants not checking to see if the Landlord could view this digital evidence, as the Landlord had reviewed all of the Tenants' evidence, this evidence was accepted, and some will be considered (see below) when rendering this Decision.

H.H. advised that the Landlord's evidence was served to the Tenants by hand on June 14, 2021 and the Tenants confirmed that they received this evidence. As this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules, this evidence was accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Are the Tenants entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 1, 2015 and the tenancy ended when the Tenants gave up vacant possession of the rental unit on August 31, 2019 after being served the Notice. Rent was established at \$1,219.20 per month and was due on the first day of each month. A security deposit of \$550.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Tenants were served with the Notice on June 26, 2019. The reason the Landlord checked off on the Notice was because "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)". The Landlord indicated on the Notice that the effective end date of the tenancy was August 31, 2019.

H.H. referred to a letter that was submitted as documentary evidence indicating that the Landlord went through some personal, family difficulties and wanted to move into the rental unit to see if this would be the right fit for him, and to heal. She advised that he moved in on September 1, 2019 and spent the majority of his time there. Animals were subsequently moved onto the property and he spent time caring for these animals, winterizing the property, and installing fencing. She cited pictures submitted as documentary evidence to demonstrate that he furnished the rental unit and lived there.

As well, she referenced documents submitted demonstrating that the Landlord's phone, internet, security, hydro, and insurance were all changed to that address. Moreover, there were letters submitted from friends that visited the Landlord on the farm, and letters of tradespeople confirming that he lived there.

The Landlord questioned the Tenants' video evidence as it seemed selective, and it is possible that the Tenants only chose to submit video evidence that would support the Tenants' position. He stated that he re-roofed the barn and had visitors from New York.

H.H. advised that the Landlord owns another property; however, he moved full time into the dispute address on September 1, 2019.

The Landlord testified that he slept and ate on the property, and he took care of the farm as well. He considered moving into the dispute address permanently and his other property sat vacant while he occupied the rental unit. He referenced documentary evidence submitted from guests of his that would eat meals and spend time with him in the rental unit.

H.H. submitted that the Landlord moved out of the rental unit on May 1, 2020 because of his deteriorating health. He moved back into his other residence as it was closer to the hospital.

Tenant T.F. advised that he set up a game camera outside the property that was motion activated. Based on his recordings, he stated that the Landlord would always live at his other property, but he would come and go from the rental unit in the morning and the nighttime, only spending approximately 20 minutes monitoring the animals each visit. In addition, the Landlord would occasionally take people to visit the animals.

He stated that when he returned the keys to the rental unit, H.H. informed him that she must move in furniture to make the rental unit look occupied. As well, he noted that the Landlord's hydro bills are substantially lower than when the Tenants lived there, and it would not be feasible to live in the rental unit based on the Landlord's usage.

T.F. submitted that the pictures that the Landlord provided demonstrating his occupancy are insufficient and simply show some furnishings. He attempted to reference videos submitted as evidence to support his position that the Landlord did not live in the rental unit; however, he was unfamiliar with the contents of his video submissions. Despite being given a substantial amount of time to direct me to the specific video clips that he wanted to reference, and to describe the relevance of those clips, he was only able to point out approximately six clips. He also referenced a letter, submitted as documentary evidence, from a neighbour who did not see any people living in the rental unit. As well, he stated that a new tenant moved into the rental unit on April 1, 2020

H.H. advised that the Landlord's hydro bills were low because he lived in the rental unit by himself, as opposed to the Tenants who had a family of four living in the rental unit. As well, she stated that the new tenant actually moved into the rental unit on May 1, 2020 and that tenant's tenancy agreement was submitted as documentary evidence to prove this.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The first issue I must consider is the validity of the Notice. On the Notice, H.H. noted herself as the Landlord; however, she would not be considered the Landlord pursuant to Section 49 of the *Act* and she would not have been entitled to serve this Notice as such. However, given the testimony of the parties, I am satisfied that both parties understood that H.H. was serving this Notice on behalf of the owner, W.C., and that the reason the Notice was served was because the rental unit will be occupied by W.C. or his close family member (parent, spouse or child; or the parent or child of that individual's spouse)." Thus, pursuant to Section 68 of the *Act*, I have amended the Notice to reflect that the owner, W.C., was the Landlord serving the Notice.

With respect to the Tenants' claim for twelve-months' compensation owed to them as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was dated June 26, 2019 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) 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.*

At the time the Notice was served, the Landlord advised that the intention was to move into the rental unit and that the Notice was served in good faith. There is no doubt that this may have been the case; however, the good faith requirement ended once the Notice was accepted by the Tenants and after they gave up vacant possession of the rental unit. What I have to consider now is whether the Landlord followed through and

complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective date of the Notice.

I understand the Tenants' concerns with respect to their doubts that the Landlord did not use the property for the stated purpose; however, the reason for the Notice was that the Landlord would occupy the rental unit. I find it important to note that in this type of Application, the onus is on the Landlord to prove that he used the property for the stated purpose.

Moreover, I note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, I must consider the weight of the evidence and may also turn to a determination of credibility. Given the contradictory testimony and positions of the parties, I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence before me, I have documentary evidence from the Landlord of utility, hydro, and gas bills for the rental unit from the effective date of the Notice until at least six months past this date. I also have statements provided corroborating that the Landlord occupied the rental unit after the effective date of the Notice.

However, on the other hand, I have T.F.'s uncertain testimony where he was unable to directly point me to evidence that would support his claims. While I acknowledge the six videos that he noted confirm his belief that the Landlord did not live in the rental unit, I find it important to note that these are simply snippets in time that were presented. While these videos demonstrate that the Landlord may have come and gone at those particular times, it does not necessarily prove that Landlord did not also come and go at other times on those days or otherwise occupy the rental unit. As the Tenants failed to submit a description of their video evidence pursuant to Rule 3.10.1 of the Rules, and as T.F. was only able to direct me to those six specific videos, none of the other videos submitted were viewed or considered. I do not find that it is my role to watch each video in the Tenants' vast submissions in the hopes of observing something that supports the Tenants' claims.

Moreover, I have a witness statement submitted by the Tenants; however, I do not find this statement to be particularly compelling or persuasive as it is vague and lacks definitive details. The statement that "I can't recall the specific length of time but do

remember it was more than a couple of months.” does not appear to be especially certain or precise.

When weighing the totality of the evidence before me, I find that the Landlord’s evidence carries more weight and I prefer it on the whole. Consequently, I am satisfied that the Landlord provided sufficient evidence to prove, on a balance of probabilities, that he occupied the rental unit within a reasonable period of time after the effective date for a period of at least six months. As such, I find that the Tenants are not entitled to a monetary award of 12 months’ rent pursuant to Section 51 of the *Act*. Ultimately, I dismiss their claim on this issue in its entirety.

As the Tenants were not successful in this claim, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

I dismiss the Tenants’ Application for Dispute Resolution 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: July 30, 2021

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Residential Tenancy Branch