



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC, FFT

### Introduction

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

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- a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not 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. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. 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 a decision regarding this application. Neither party made any adjournment or accommodation requests. 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 to be Decided

Are the tenants entitled to a monetary order the equivalent of twelve months' rent as claimed?

Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The landlord gave the following testimony. The tenancy had a monthly rent payable of \$1745.00 due on the first of each month. On March 19, 2020 the landlord served the tenant with a two month Notice to End Tenancy for Landlords' Use of Property. The Notice to End Tenancy required the tenants to move out of the rental unit by May 31, 2020. The ground for the Notice was:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.*

The landlord testified that the tenants complied with the effective date of the notice. The landlord testified that she wasn't able to physically go to the unit until August 25, 2020 because she was helping care for her brother's newborn child in Toronto. The landlord testified that after sleeping in the unit for one night she decided to renovate the unit. The landlord made a written request to the strata on September 30, 2020 which was approved on October 22, 2020 to conduct those renovations. The landlord testified that renovations were completed and that she took possession and began using the unit as her primary residence on January 12, 2021. The landlord testified that she has only been able to stay in the unit on a minimal basis due to family commitments. The landlord said she had the intention of moving in right away, but those commitments delayed the process.

Counsel for the tenants made the following submissions. Counsel submits that the landlord ought to have planned to do the renovations in advance of taking possession of the unit. Counsel submits that by the landlords on testimony, they have only spent three and half months in the unit since taking possession fourteen months ago, with only one of those days occurring in the first seven months of possession. Counsel submits that the landlord has not complied with the notice and that the tenants are entitled to 12 months compensation as per section 51 of the Act.

### Analysis

Section 51(1) of the Act requires that a landlord, who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (2) In addition to the amount payable under subsection (1), if
  - (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
  - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

In the 2 Month Notice the reason provided for the tenancy to end is that the owner or a close family member will occupy the rental unit. In the landlord's own testimony, she acknowledges and concedes she did not act in accordance with what the basis of the notice stated until January 2021, seven months after the effective date of the notice. The landlord testified that she had to help take care of her brothers' newborn child and that she had to take her mother to Hong Kong for a doctor's appointment. The landlord also stated that she decided to renovate the unit on her first visit to the unit, which occurred three months after taking possession of it. The landlord testified that the unit was "unlivable" but did not provide sufficient evidence to support that claim.

Section 51(3) provides that: 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 provides some examples of extenuating circumstances including death and wildfires. The Guideline specifically cites changing one's mind or failing to adequately budget to be examples of circumstances that may

not be extenuating. An example provided of a situation that may be considered extenuating is: A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.

I find that the circumstances before me do not meet the reasonable characterization of extenuating circumstances and consequently the landlord is not excused from their obligation under section 51(2) of the Act to pay the tenant an amount equivalent to 12 times the monthly rent of \$1,745.00 in the amount of \$20,940.00.

The tenants are also entitled to the recovery of the \$100.00 filing fee for this application.

### Conclusion

The tenants have established a claim for \$21,040.00. I grant the tenants an order under section 67 for the balance due of \$21,040.00. This order may be filed in the Small Claims 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: August 06, 2021

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Residential Tenancy Branch