



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirmed that no recording device was being used in compliance with the Rules of Procedure.

### Preliminary Matter

The Landlord notes that the Tenant’s application has combined each of the Landlord’s names as one named Landlord. The Tenant states that the Landlord’s names were set out as contained in the notice to end tenancy. The Landlord confirms that they understood that the Tenant was naming each of them and the Parties agree to the application being amended to set out the Landlords’ names separately, as confirmed by the Landlord.

### Issue(s) to be Decided

Did the Landlord use the unit as stated in the notice to end tenancy?

Background and Evidence

The Tenant states as follows:

The tenancy of a lower unit started on December 1, 2004 Rent of \$1,181.00 was payable monthly at the time the Tenant was given a two month notice to end tenancy for landlord's use (the "Notice"). The Notice is dated October 30, 202 and sets out an effective date of January 10, 2021. The reason stated on the Notice is that the unit was sold, that the purchaser asked the Landlord in writing to end the tenancy and that the Landlord or the Landlord's close family member would occupy the unit. The names of the purchasers are included in the Notice. The Tenant states that the unit was advertised for rent in March or April 2021 and that the Tenant thereafter saw tenants in the unit.

The Landlord states as follows:

It is unknown when the tenancy started or ended or what amount of rent was being paid. The unit within a house containing two other rental units was purchased as an investment property with the intention that Landlord PD and SD, a married couple, would reside in either an upper or lower unit and Landlord BD would continue to reside in the family home. The Landlord also wanted vacant possession and were unsure if family members would reside at the house. The Landlord did ask for vacant possession of the unit and vacant possession was a condition on the sale of the house. While in negotiations to purchase the house the seller's agent agreed that they would provide vacant possession, would accommodate the tenants that were residing in the house, and would facilitate whatever was needed to be done to provide vacant possession. The house was purchased in October 2020 and the original completion date for December 2020 was extended as the seller asked for a longer completion date in order to provide vacant possession. The Landlord argues that they should not be responsible for the reason stated on the Notice as they were unaware that the Notice required the Landlord to occupy the unit. Further the seller or its agent did not give the Landlord the same copy of the Notice as was given to the Tenants. The Landlords were given only the second page of the Notice from its agent and that their copy does not have any

reason selected on the Notice. The Landlord was not aware at the time of the sale of any of the laws that affected the purchase of a rental unit and did not consult a lawyer for the purchase.

The Landlord obtained vacant possession of the unit on January 12, 2021, all three units in the house were subsequently renovated and in late February 2021 they were all advertised for rent. A son of Landlord PD and BD used the unit for storage from January 12 to April 15, 2021.

In September 2020 Landlord PD became aware of health problems with tests for cancer being inconclusive. Landlord PD was required to undergo additional tests with monitoring continuing to the current time. By late February 2021, it became clear that Landlord PD and SD would not move into any unit in the house as Landlord PD was told not to make any changes and to avoid possible molds. As the house with the unit was old, as renovations were planned for the house and as nothing was clear with Landlord PD's medical condition the children of Landlord PD and SD wanted them to remain living with the children in the family home. In March 2021 it was determined that Landlord PD did not have cancer. The Landlords underwent significant stress and uncertainty as a result of Landlord PD's health and the medical investigations. The Landlord argues that extenuating circumstances prevented the Landlords from occupying the rental unit.

### Analysis

Section 51(2) of the Act provides that 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 the landlord or purchaser, as applicable, does not establish that

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and

(b)the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Given the undisputed evidence that the unit was not occupied by any one of the Landlords I find that the Tenant has substantiated an entitlement to the equivalent of 12 months rent. Based on the Tenant's undisputed evidence I find that the Tenant was paying monthly rent of \$1,181.00.

Section 51(3) of the Act 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 applicable, from

- (a)accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
- (b)using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Although the Landlord argues that since they did not know that the unit was required to be occupied by the Landlord and that they did not know the applicable law when purchasing a rental unit, it is clear from the Landlord's evidence that the Landlords wanted vacant possession and asked the seller for vacant possession as a condition of the purchase. It is up to the purchaser of a rental unit to ensure they understand the legal implications of asking for vacant possession of a rental unit. For this reason, I do not consider that ignorance of the law is an extenuating circumstance that would excuse the Landlord from occupying the unit.

Although the Landlord's evidence may support a finding that Landlord PD experienced extenuating medical circumstances that prevented Landlord PD and BD from occupying the unit, there is no evidence that Landlord SD faced any extenuating circumstances that prevented this Landlord from occupying the unit. I also note that the evidence of

purchase of the house as an investment property and the variable intention of occupying any one of the units in the house upon possession of the house does not support a good faith intention from the outset of the purchase for any of the Landlords to occupy the unit in question. For these reasons I find that the Landlord has not provided evidence of extenuating circumstances that prevented the Landlords from occupying the unit. The Landlords are therefore not excused from paying the Tenant the compensation claimed. The Tenant is entitled to the equivalent of 12 month's rent of **\$14,172.00** (\$1,181.00 x 12).

As the Tenant has been successful with the claim, I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$14,272.00**.

#### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$14,272.00**. If necessary, 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 Act.

Dated: September 1, 2021

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Residential Tenancy Branch