



# Dispute Resolution Services

Page: 1

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* (the "*Act*") for a monetary award for damages and loss pursuant to sections 51 and 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Landlord MB (the "landlord") primarily spoke on behalf of both named co-landlords.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing a typographic error in the name of one of the respondents was noted and corrected with the consent of all of the parties. The corrected name is used in the style of cause for this decision.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy originally began in 2012. The monthly rent at the end of the tenancy was \$1,350.00 payable on the first of each month. The rental unit is a single detached home. The tenancy ended in accordance with a 2 Month Notice to End Tenancy for Landlord's Use dated January 25, 2021. The reason given on the notice for the tenancy to end is that the rental unit will be occupied by the landlord or the landlord's close family member. As at the date of the hearing, November 8, 2021, the landlords have not moved into the rental unit.

The parties confirm that the tenants were residing in the rental unit until the end of the tenancy. The landlord gave evidence that they intended to occupy the rental unit themselves with their family but upon taking possession on April 1, 2021, found that the suite required considerable renovation work to make it habitable. The landlord submits that the work has taken a long time due to material shortages, shipping delays, scheduling conflicts and shortage of funds.

The landlord testified that the rental unit had an unpleasant odor requiring removing the carpeting. The removal of the carpeting uncovered issues with the flooring underneath. The landlord said they also discovered water leaks requiring removal of drywall, replacement of appliances, structural damage and plumbing and electrical work. The landlord writes in their submissions:

I am a Red Seal Carpenter with a great deal of experience carrying out renovations and repairs to houses similar to this. I have no doubt that due to the damage and extensive repairs necessary to return this house to a habitable dwelling, and with the condition of the house continuing to deteriorate at the rapid rate that it was, the house could be beyond my ability to repair within a year.

The landlord testified that the rental building is suspected of being at least 100 years old and that they had "enough experience to know you don't move into a building that old without having to do some work".

The landlord submits that due to the extensive nature of the work being conducted on the rental unit they required permits from the municipality. The landlord also submits

“The permit was also necessary to allow me to complete a number of upgrades that I wanted to do to the house”. The landlords submit that due to the nature of the renovations the rental unit could not be occupied during the ongoing work. The landlord said they hope to complete the work and occupy the rental unit by the end of December 2021.

The landlord further submits that their work on the rental unit was delayed when they returned to full-time work in the beginning of May. They also testified that the extent of the work required some delays to arrange for financing.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51(2) of the *Act* states that a landlord, or the purchaser of a property, must pay the tenant an amount that is equivalent to 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,

In the present case the parties agree that the landlords issued a 2 Month Notice which provides the reason for the tenancy to end is that the landlord intends to occupy the rental unit. The tenancy ended pursuant to the notice on March 31, 2021. The landlords have not occupied the rental unit as at the date of the hearing, November 8, 2021.

Pursuant to section 51(3), the director may excuse the landlord 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 expands on this point and provides that Extenuating circumstances are "circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control".

Based on the evidence I am unable to attribute the failure of the landlords to occupy the rental unit to extenuating circumstances.

The landlord's own testimony is that they are an experienced professional in the construction field who knew that the rental unit would require work to be done prior to occupying. I find the landlords' own evidence demonstrates that the renovation work was anticipated and expected.

Additionally, the landlord submitted that there were a number of upgrades they wanted to do to the rental property. It is clear from the evidence of the landlord that they issued the notice to end the tenancy with the full expectation and intention to perform work on the rental unit prior to the unit being occupied. While it is reasonable that some cleaning or minor work be undertaken by a landlord prior to occupying a rental unit pursuant to a notice to end tenancy issued under section 49, in the present case the work undertaken is so extensive that it has not been conclude over 7 months after the tenancy ended.

The landlord submits that they were unaware of the degree of work that would be required on the rental unit until they took possession and began the process of making the suite habitable. I do not find the landlords' submissions to be persuasive, consistent with the evidence of the parties or their own submissions. The rental unit was occupied by the tenants until the end of the tenancy. There is no question that the rental unit was suitable for habitation at the time that the landlords gained possession.

The landlord testified that they are an experienced professional who knew prior to taking possession of the rental property that work would be required given the age and character of the building. If the landlords were aware that they would perform work on the rental unit then they could have issued a notice to end tenancy pursuant to section 49.2 of the *Act*. They chose not to do so but instead issue a notice under section 49 indicating their intention to occupy the rental unit.

Extenuating circumstances are those situations that would make it unreasonable and unjust to expect a landlord to accomplish the stated purposes for ending a tenancy. While an unexpected discovery of water damage to the rental property, or material shortage may be an example of such extenuating circumstances, I find that the degree of the work undertaken by the landlords goes beyond addressing these issues and more in the nature of upgrading the property. I find such factors as ordering appliances, adding an extension to the bedroom, replacing windows and cabinetry to be more properly characterized as renovation rather than repairs. I find that the evidence supports the interpretation that the landlords commenced work beyond addressing immediate deficiencies but to renovate and upgrade the property.

The landlord also attributed some of the delay in occupying the rental unit to their financial situation to complete the work to the rental property. Policy Guideline 50 explicitly excludes situations where “A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds” as an exceptional circumstance.

Based on the evidence I find that the landlords did not accomplish their stated purpose for ending the tenancy. I find that the delay due to construction work to not be extenuating circumstances but to have been anticipated by the landlords when issuing the initial notice to end tenancy and contributed to by the landlords’ decision to perform additional renovations and upgrades to the rental unit. Consequently, I allow the tenants’ claim and award an amount of \$16,200.00, the equivalent of 12 times the monthly rent of \$1,350.00.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$16,200.00. The landlords must be served with this Order as soon as possible. Should the landlords 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: November 8, 2021

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Residential Tenancy Branch