



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

On April 30, 2021, the Tenants applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking compensation for money owed or damage or loss under the Act, Regulation, or tenancy agreement.

The matter was scheduled as a teleconference hearing. The Landlord and Tenants were present at the hearing. The Landlord was assisted by legal counsel. At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the evidence before me. The parties were informed that recording the hearing is not permitted.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

Section 60(1) of the Act provides that an application for dispute resolution must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned. The parties testified that the tenancy ended on April 30, 2019. The Tenants’ application on April 30, 2021, was made within the required time period.

### Issues to be Decided

- Are the Tenants entitled to money owed or compensation for damage or loss?

### Background and Evidence

The parties testified that the tenancy began on December 1, 2017. Rent in the amount of \$1,800.00 was due to be paid to the Landlord by the first day of each month. The rental unit is located in the upper suite of a house with a lower rental suite located below.

The Tenant testified that they moved out of the rental unit on April 30, 2019 after they received a Two Month Notice to End Tenancy for Landlord's Use of Property dated February 22, 2019 ("the Two Month Notice").

The Tenant provided a copy of the Two Month Notice. The reason cited for ending the tenancy within the Two Month Notice is:

*The rental unit will be occupied by the Landlord or the Landlord's close family member spouse or a close family member.*

The Tenants are seeking compensation of \$21,600.00 which is twelve months of the rent payable under the tenancy agreement.

The Tenants testified that they were looking for places to move when they saw a listing for the dispute address at \$2,000.00 per month. The Tenants testified that they observed new people moving into the downstairs suite. The Tenants provided a video recording they took of people moving into the lower rental unit.

The Tenants stated that they believe the people moving into the unit is relevant to their claim because both the upper and lower rental units had received a Two Month Notice to End Tenancy for Landlord's Use of property; and the downstairs unit appears to have been re-occupied.

In reply, the Landlord's counsel submitted that the Tenants provided no evidence that the Landlord did not use the rental unit for the purpose stated in the Two Month Notice.

The Landlord provided an affirmed affidavit dated October 19, 2021 that provides that on or about May 1, 2019 his son moved into the rental unit and lived there for approximately eight months before moving out in December 2019.

The Landlord's son provided an affirmed affidavit dated October 19, 2021 that provides that on or about May 1, 2019 he began residing in the upstairs unit at the dispute address and continued to live there until December 2019.

## Analysis

Section 51 (2) of the Act provides:

*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.*

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

## Compensation for Breach of Section 51

Any notices to end tenancy, other agreements, or possible breaches of the Act between the Landlord and the lower Tenants, who were under a different tenancy agreement, do not entitle the Tenants to compensation.

The Landlord provided the better evidence that the upper rental unit was occupied by his son from May to December 2019.

I find the Tenants have provided insufficient evidence to establish that the Landlord failed to occupy the upper rental unit for a six-month period following the effective date of the Two Month Notice.

The Tenants' application is dismissed in its entirety without leave to reapply.

Conclusion

The Tenants application seeking compensation of \$21,600.00 from the Landlord is not successful. The Tenants provided insufficient evidence to establish that the Landlord breached the Act by failing to occupy the upper rental unit for a six-month period following the effective date of the Two Month Notice.

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 23, 2021

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Residential Tenancy Branch