



# 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 an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”) for compensation from the landlords related to a Two Month Notice for Landlord’s Use of Property (the “Notice”) issued on December 18, 2020.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. Both parties confirmed under affirmation that they were not recording this hearing in compliance with the Residential Tenancy Branch Rules of Procedure 6.11.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

In this case, I have reviewed the tenancy agreement filed in evidence. RJ is the only tenant listed in the tenancy agreement. KB was removed from the tenancy agreement on the cover page and did not sign the agreement. Therefore, KB is not a tenant under the Act and has no rights or obligation under the tenancy agreement or Act. While KB was living in the rental unit that is only as an occupant. Therefore, I find only RJ had a right to make this application. KB was removed from the style of cause.

### **Issue to be Decided**

Is the tenant entitled to compensation?

### Background and Evidence

The tenancy began on March 1, 2020, which began as a 12-month fixed term tenancy that continued thereafter on a month-to-month basis. Rent in the amount of \$2,550.00 was payable on the first of each month. The tenant paid a security deposit of \$1,275.00. A copy of the tenancy agreement was filed in evidence.

The parties agreed that the tenant moved out of the rental unit on February 28, 2021, after receiving a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice") dated December 18, 2020 from the landlords.

The parties agreed that the reason for ending the tenancy within the Two Month Notice was:

- *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 tenant testified that the landlords did not using the rental unit for the purpose stated in the Two Month Notice because the day after they vacated the residence they listed the property for sale and the premises sold two weeks later.

The tenant testified that the landlords had issue a previous Two Month Notice to End Tenancy for Landlord's Use of Property for the same reasons; however, the property was listed for sale and showing were being conducted. The tenants stated they were under a fixed term at that time and the landlords could not end the tenancy. The tenant stated that the prior notice was agreed to be cancelled.

The landlords testified that the intent was to move into the home and sale the property. The landlords stated that they did not expect to receive an offer on the property so quickly and they accept that offer and the property was sold.

The landlords testified that they needed to sale the property due to financial hardships created by Covid-19.

The landlords testified that they did issue a prior notice to end tenancy; however, when they realized they could not end the tenancy due to the fixed term they agreed to cancel the notice to end tenancy and took the property of the market.

The landlords testified that because the tenants were difficult with showing and were not presenting the premise in a reasonable stated they felt they had no option but to move into the premise while they waited from the property to be sold.

### Analysis

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

While I accept that there was an earlier notice to end tenancy; however, that is not the issue before me and the issue of “good faith” is not required to be considered as the tenants had accepted the Two Month Notice and the reason for ending the tenancy.

The issue for me to determine at this hearing, is did the landlords use the rental unit for the stated purpose for at least six months as required by section 51(2) of the Act.

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. [my emphasis]**

(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.

With respect to extenuating circumstances, the Guideline provides the following: An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the Landlord from accomplishing the purpose or using the rental unit.

The Guideline provides circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal but didn't notify the landlord of any further change of address or contact information after they moved out.

The Guideline provides that the following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations

In this case, the tenants vacated the rental unit on February 28, 2021 based on the Two Month Notice. The day after the tenant vacated the rental unit the property was listed for sale and was sold two weeks later.

Even, if the landlords did move into the premise for a short duration, I find the landlords failed to use the rental unit for the stated purpose for at least six months. Therefore, I find the landlords must pay the tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement, pursuant to section 51(2) of the Act.

I have also considered section 51(3) of the Act and the Policy Guideline as the landlords may be excused from paying compensation if, in the director's opinion, extenuating circumstances prevented the landlords from using the rental unit for the stated purpose for at least six months.

While I accept the landlords may have been having financial issues due to Covid-19; however, this is not an extenuating circumstance. The landlords knew their financial circumstance at the time they issued the Two Month Notice. I find it was the landlords'

personal choice when they decided to list the property for sale right after the tenants vacated the rental unit, then accepted an offer to purchase the property and sold the property just two weeks later. Rather, than to meet their obligations under the Act.

I find it would be unreasonable to excuse the landlords from paying compensation under the Act. I find the tenant is entitled to compensation in the amount of **\$27,000.00** which is the equivalent of 12 times the monthly rent payable under the tenancy agreement. ( $\$2,550.00 \times 12 = \$27,000.00$ )

As the tenant was successful with their application, I find the tenant is entitled to recover the cost of \$100.00 for their filing fee. I find the tenant is granted a monetary order in total amount of **\$27,100.00**. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The landlords are cautioned that costs of such enforcement are recoverable from the landlords.

### Conclusion

The landlords issued a Two Month Notice to the Tenant who accepted the Notice and moved out of the rental unit on February 28, 2021.

The landlords did not use the rental unit for the purpose stated within the Two Month Notice for a six-month duration. The landlords sold the property. The landlords must pay the tenant the amount of 12 months' rent payable under the tenancy agreement.

The Tenant is granted a monetary order in the amount of \$27,100.00 for the landlords breach of section 51 of the Act, and the cost of the filing fee

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 3, 2021

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Residential Tenancy Branch