



# 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 for compensation based on a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") issued on January 18, 2021 for the amount that is equivalent to twelve (12) months of rent and to recover the filing fee.

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 making a prohibited record of this hearing.

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

### **Issue to be Decided**

Are the tenants entitled to monetary compensation pursuant to section 51(2) of the Act?

### **Background and Evidence**

The tenancy began on October 1, 2019. Rent in the amount of \$1,600.00 was payable on the first of each month. A security deposit of \$800.00 was paid by the tenants. The tenancy ended on March 31, 2021.

The parties agreed that the tenants were served the Notice. Filed in evidence is a copy of the Notice.

The reason for ending the tenancy within the Notice is:

*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 tenants testified that the landlord did not use the premises for the stated purpose. The tenant stated on April 12, 2021, the landlord contacted them to see if they wanted to purchase the property because they had expressed interest in buying the property earlier; however, they were unable to do so.

The tenants testified that the rental unit remained vacant and the landlord listed the property for sale. The tenant stated they do not know the exact date the property sold; however, the real estate listing on August 31, 2021 had show the property was sold. Filed in evidence is a copy of the real estate listing

The landlord testified that the intent was for their family to use the property for their vacation property to use and enjoy.

The landlord testified that they were informed by the tenants when they were moving out of the rental unit that they found some vermiculite. The landlord state because of this they decided to sale the property.

The tenants responded that although they found some vermiculite and informed the landlord that it could contain asbestos. However, they were only guessing on what it was, based on an internet image search.

### Analysis

#### **Tenant's compensation: section 49 notice**

**51** (1)A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid.

(2) 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.

(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 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.

I am satisfied that the landlord did not use the rental unit for the stated purpose for at least six months as the property was vacant and sold sometime prior to August 31, 2021. I find the landlord failed to use the rental unit for the reason stated in the Notice. Pursuant to section 51(2) of the Act, the landlord must pay the tenants the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I have further considered section 51(3) of the Act and the Policy Guideline regarding compensation and extenuating circumstances.

In this case, the landlord stated that they decided to sale the property because of the vermiculite found by the tenants at the end of the tenancy.

I have reviewed the email the landlord sent the tenants to see if they were interested in buying the property, dated April 12, 2021. The email stated that there were multiple reasons and that they were likely going to list the home. There is nothing in the email saying this was because the vermiculite found by the tenants or that it contained asbestos.

Further, the landlord provided no documentary evidence that the vermiculite contained asbestos or that the cost to rectify the problem and make the rental unit safe to occupy would be so high that it would put their family in financial hardship and due to this they had to sale the home, disclosing this information to the purchaser. I find it more likely than not that the landlord's sold the property for other reasons which no testimony or evidence was provided by the landlord for me to consider and this was a personal choice.

Based on the above, I find that the circumstances submitted by the landlord as an excuse from paying compensation to the tenants does not meet the threshold of extenuating circumstances in accordance with the intention of the legislation and the policy guideline. Therefore, I find it would be unreasonable to excuse the landlord from paying the compensation owed to the tenants. I find that the landlord owes the tenants **\$19,200.00** which is the equivalent of 12 times the \$1,600.00 monthly rent payable under the tenancy agreement.

I find the tenants have established a total monetary claim of **\$19,300.00** comprised of the above and \$100.00 to recover the cost of the filing fee. I grant the tenants a formal order pursuant to section 67 of the Act. This order may be enforced in the Provincial Court (small claims).

### Conclusion

The tenants' application for compensation equivalent to 12 months rent is granted. The tenants are granted a monetary order in the above noted amount

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 17, 2021

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Residential Tenancy Branch