



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, MNDCT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on July 13, 2021 (the “Application”). The Tenants applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenants appeared at the hearing. The Purchaser’s son (the “Agent”) appeared for the Purchaser at the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

I confirmed with the parties at the outset that the tenancy ended October 31, 2020. The Tenants confirmed they moved out of the rental unit October 31, 2020. At first, the Agent disagreed that the Tenants moved out of the unit October 31, 2020; however, it was not clear what the Agent’s position on this was. I explained to the Agent that I was taking testimony from the parties and only suggested the October 31, 2020 date because this is what is written on the Application. I explained to the Agent that I was asking them when the Tenants moved out. The Agent confirmed the Tenants moved out October 31, 2020.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Agent confirmed receipt of the hearing package and Tenants’ evidence and did not raise any issue with service when asked.

The Tenants advised that their evidence uploaded November 15, 2021 was not served on the Purchaser because they only received the Purchaser's materials the day before. The Tenants advised that they could not send their response to the Purchaser by registered mail in time for the hearing. I asked the Tenants what the purpose of their response evidence was and they advised that it was to show that they moved out of the rental unit October 31, 2020 contrary to what the Purchaser has claimed in their written response. I again confirmed with the Agent that they agree the Tenants moved out October 31, 2020 and the Agent confirmed their position is that the Tenants moved out October 31, 2020 but should have moved out October 01, 2020. Given the Agent agreed the Tenants moved out October 31, 2020, I confirmed with the Tenants that I would exclude their November 15<sup>th</sup> evidence because it was not served on the Purchaser and we would proceed with the hearing because both parties agreed on the move out date, which was the point of the response evidence. The Tenants agreed with their November 15<sup>th</sup> evidence being excluded and proceeding with the hearing in the circumstances.

The Tenants confirmed they received the Purchaser's evidence and stated that it was received two days late. The Tenants agreed the late receipt of evidence was no longer an issue given the parties agreed on the move out date.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Are the Tenants entitled to compensation for monetary loss or other money owed?
2. Are the Tenants entitled to reimbursement for the filing fee?

#### Background and Evidence

The Tenants sought \$9,460.00 in compensation pursuant to section 51 of the *Residential Tenancy Act* (the "Act") based on the Purchaser failing to follow through with the stated purpose of a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice").

The Tenants testified as follows. They rented the unit from the previous owner. Tenant A.P. moved into the unit in 2014 and Tenant B.S. moved into the unit in 2016. In 2018, the Tenants and previous owner signed a new tenancy agreement. The tenancy was a month-to-month tenancy. Rent was \$780.00 per month due on the first day of each month. The Tenants paid a \$375.00 security deposit. Rent at the end of the tenancy was \$780.00. The Purchaser purchased the unit October 01, 2020 and the previous tenancy agreement simply carried on.

The Agent testified that the previous owner told them about rent and the security deposit only. The Agent agreed rent was \$780.00 at the end of the tenancy.

The Agent took the position that the tenancy ended October 01, 2020 pursuant to the Notice.

The Notice was submitted. The Notice is dated August 28, 2020 with an effective date of October 31, 2020. I asked the Agent why their position was that the tenancy ended pursuant to the Notice October 01, 2020 and the Agent said they were mistaken and agreed the tenancy ended pursuant to the Notice October 31, 2020.

The grounds for the Notice are as follows:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The Notice names the Purchaser as the purchaser of the rental unit.

The parties agreed the Notice was served on the Tenants.

The Tenants testified as follows. They moved out of the rental unit October 31, 2020. A co-worker of Tenant A.P.'s moved into the rental unit in the last week of April and started paying the Purchaser rent May 01, 2021. In March of 2021, Tenant B.S. attended the rental unit to check on mail and saw that the rental unit was empty.

The Agent testified as follows. They temporarily moved into the rental unit right after the Tenants moved out. Tenant B.S. did not look in the bedroom because a bed was set up in there. They were renovating their house so they were staying at the rental unit. After their renovation was complete, they rented the unit out. They had some work in the

area and had some others staying in the main house while working. They moved into the rental unit in November of 2020. They cleaned everything out of the rental unit April 07, 2021 but still used it for storage.

I asked the Agent why their testimony conflicts with the written submissions submitted for the Purchaser. The Agent referred to the written submissions stating that the Tenants lived in the rental unit longer than October. I acknowledged this and pointed out that this conflicts with the Agent's testimony at the hearing. The Agent suggested that they were simply agreeing with me about the October 31, 2020 date and testified that the Tenants were in the rental unit much longer and lived there rent free. The Agent then testified that the Tenants moving out when they did "threw a wrench in the plans" but that the Purchaser made it work. The Agent testified that the Tenants moved out in January of 2021. The Agent then testified that the Tenants moved out later than October towards the end of 2020. The Agent then said they are not great at these things and to "just let the evidence provided to the rental board do the talking".

The Agent also submitted that the Tenants did not file within 15 days of being served the Notice.

The Purchaser provided written submissions which state as follows. The Tenants restricted the Purchaser's family member from moving into the property effective November 01, 2020. The Tenants remained in the rental unit until mid-January of 2021. A family member of the Purchaser began residing in the rental unit February 01, 2021 and had fully expected to move into the unit November 01, 2020 but could not due to the overholding Tenants. The Purchaser is not aware of the rent amount being paid to the previous owner by the Tenants. Due to the Tenants not vacating the rental unit October 31, 2020, alternative living arrangements were made by the family member of the Purchaser until the Tenants vacated. The Tenants did not pay rent while living in the rental unit from October 01, 2020 through to January 2021.

It is not clear to me who wrote the written submissions for the Purchaser as there is no name associated to this document.

### Analysis

The Notice was issued pursuant to section 49(5) of the *Act* which states:

(5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
  - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit...

Section 51 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the *Act* and states:

(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.

(emphasis added)

Pursuant to section 51(2) of the *Act*, the Purchaser has the onus to prove that they, or a close family member, occupied the rental unit within a reasonable period after the effective date of the Notice and did so for at least six months. The standard of proof in a dispute resolution hearing is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I do not find the Purchaser's evidence credible. The Agent provided contradictory testimony during the hearing, for example, that the Agent moved into the rental unit in November of 2020 yet the Tenants did not vacate the rental unit until late 2020 or January of 2021. The Agent changed their testimony throughout the hearing, for example, they provided three different timelines for when the Tenants moved out of the rental unit. I do not find the Agent credible and do not find that I can rely on the Agent's testimony. Further, the Agent's testimony conflicted with the written submissions of the Purchaser. The version of events as told by the Agent and the written submissions of the Purchaser cannot both be true. In the circumstances, I find I cannot rely on the Purchaser's evidence because I do not find it credible. Given the Purchaser's evidence is not credible, the Purchaser has failed to prove that they, or a close family member, occupied the rental unit within a reasonable period after the effective date of the Notice and did so for at least six months.

I also note that the Purchaser has not submitted documentary evidence that shows they, or a close family member, occupied the rental unit within a reasonable period after the effective date of the Notice and did so for at least six months.

I find it more likely than not that the Tenants' version of events is accurate. There was nothing about the Tenants' testimony that raised reliability or credibility concerns. I accept that the Tenants moved out of the rental unit October 31, 2020. I accept that a co-worker of Tenant A.P.'s moved into the rental unit in the last week of April, which was within six months of October 31, 2020, the effective date of the Notice. I accept that the rental unit was empty and not being used in March of 2021, within six months of the effective date of the Notice.

Given the above, I find it more likely than not that the Purchaser did not follow through with the stated purpose of the Notice within a reasonable period after the effective date of the notice and did not use the rental unit for the stated purpose for at least six months. The Purchaser has failed to prove that they did and I prefer the evidence of the Tenants on this point. I do not accept that extenuating circumstances prevented the Purchaser from following through with the stated purpose of the Notice within a reasonable period after the effective date of the notice or from using the rental unit for the stated purpose for at least six months because I do not find the Purchaser's evidence credible and the Purchaser has therefore failed to prove extenuating circumstances.

Pursuant to section 51(2) of the *Act*, the Purchaser must pay the Tenants \$9,360.00.

I note that the Tenants were not required to file the Application within 15 days of receiving the Notice as suggested by the Agent and in the written submissions of the Purchaser. The Tenants had 15 days from receipt of the Notice to dispute it which is a different issue. In relation to compensation pursuant to section 51 of the *Act*, the Tenants had two years from the end of the tenancy to file the Application pursuant to section 60 of the *Act*.

As the Tenants were successful in the Application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to \$9,460.00 and I issue the Tenants a Monetary Order in this amount.

### Conclusion

The Application is granted. The Tenants are entitled to \$9,460.00 and I issue the Tenants a Monetary Order in this amount. This Order must be served on the Purchaser and, if the Purchaser does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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: November 23, 2021

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Residential Tenancy Branch