



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking monetary compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the landlords for the cost of the application.

The tenant attended the hearing with the tenant's adult child as agent for the tenant, due to translation difficulties. Both landlords also attended with another person for translation purposes as well as another person for support. The tenant, the tenant's agent and one of the landlords each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing the tenant's agent submitted that the landlord's evidence was received 2 days prior to the hearing. The landlord believed the evidence had to be provided to the Residential Tenancy Branch and to the tenant 3 days prior to the hearing. Any evidence that a respondent wishes me to consider must be provided to the applicant(s) and be uploaded to the Residential Tenancy Branch automated system no less than 7 days prior to the hearing. Since the landlords have not done so, I decline to consider the landlords' evidence. All evidence of the tenant has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlords for compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property?

### Background and Evidence

**The tenant's agent** (GH) testified that this fixed term tenancy began on May 1, 2014 and reverted to a month-to-month tenancy after April 30, 2015. Rent in the amount of \$1,300.00 per month was originally payable.

At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$650.00 which was repaid to the tenant in full after the tenancy ended, and no pet damage deposit was collected.

A copy of the tenancy agreement has been provided as evidence for this hearing, as well as a second tenancy agreement. It specifies rent in the amount of \$1,450.00 for a month-to-month tenancy commencing on May 1, 2014. Rent was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. The rental unit is the top level of a house, and the bottom level was occupied by other tenants not related to the landlords.

The tenant's agent further testified that the landlords served a Two Month Notice to End Tenancy for Landlord's Use of Property, and a copy has been provided by the tenant for this hearing. It is dated February 28, 2021 and contains an effective date of vacancy of April 30, 2021. The reason for issuing it states: 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), specifying the landlord or the landlord's spouse.

The landlords were getting a divorce and the wife was going to move into the rental unit. The tenant vacated on April 1, 2021 and received the equivalent of 1 month's rent as compensation. However, the landlord did not move in, but sold the rental home. A Title Search has been provided for this hearing indicating that ownership changed effective May 18, 2021.

When picking up the mail, a neighbour told the tenant and agent that the property had sold.

**The tenant** testified that the tenancy began in 2014 and ended on March 29 or 30, 2021.

The second tenancy agreement was created because the landlord said that a bank loan had to be refinanced and a new tenancy agreement was required. The tenancy agreement specifies rent of \$1,450.00 per month, however after the 1<sup>st</sup> year it was increased by \$50.00 per month verbally. Strings of emails exchanged between the parties have been provided as evidence for this hearing.

**The landlord** testified that the reason for issuing the Two Month Notice to End Tenancy for Landlord's Use of Property was genuine, and there was no intention to mislead anybody. The landlord was under a lot of stress due to the landlords' relationship at the time, and the situation changed. The landlord had to move out of the landlords' home and live with a brother.

The landlord did not completely move into the rental unit, but received the keys from the tenant on April 3, 2021. The landlord wanted to get rid of the house due to problems with neighbours and the house needed a lot of repairs. A friend was looking for a house to buy and the landlord asked the tenant to show the house, and a couple of months later, the landlord's friend decided to buy it. The completion date was May 18, 2021.

The landlord agrees that rent in the amount of \$1,500.00 per month was payable by the tenant from 2018.

### Analysis

The *Residential Tenancy Act* states that in issuing a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice), the landlord must have good faith intent to use the rental unit for the purpose contained in that notice. In this case, the reason for issuing the Notice is for the landlord or a close family member to reside in it. The law states that the landlord or the close family member must occupy the rental unit for at least 6 months, and the consequences are quite severe: an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

The law also states that if I find that extenuating circumstances prevented the landlord from accomplishing the stated purpose for ending the tenancy within a reasonable time after the effective date of the Notice, or to use it for at least 6 months, I may excuse the landlord. In this case, I accept that the landlords had some personal issues, but I cannot in the circumstances find that the landlord could not have occupied the rental unit and stay for at least 6 months. I am not satisfied that extenuating circumstances prevented the landlord from moving into the rental unit and occupying it for at least 6 months.

Neither of the landlords moved in, but sold the rental unit less than 1 month after the tenancy ended. Therefore, I find that the landlords must repay the tenant 12 times the monthly rent.

The parties agree that rent was \$1,500.00 per month and I find that the tenant is entitled to compensation in the amount of \$18,000.00. Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$18,100.00.

This order is final and binding and may be enforced.

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: January 14, 2022

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Residential Tenancy Branch