



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNETC, FF

### **Introduction**

This hearing dealt with the tenants' application and amended application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- Compensation from the landlords related to receiving a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice);
- compensation for a monetary loss or other money owed; and
- recovery of the filing fee.

The tenants, the landlords, and the landlord's legal counsel (counsel) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter all participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### **Preliminary and Procedural Matters-**

*Evidence –*

At the beginning of the hearing, the parties confirmed receipt of the other's evidence. During the hearing, however, it was discovered that I had not received all the tenants' evidence. This evidence was a monetary order worksheet and receipts, which the tenant asserted supported their additional monetary claim.

Counsel confirmed they received this evidence. I allowed the tenant to read from their evidence and provide testimony on this claim during the hearing. Afterwards, the tenant was allowed to upload this evidence after the hearing so that I could consider the merits of the claim.

I note that the tenant did upload only that evidence after the hearing, and it was considered for this Decision.

*Recording of hearing –*

The parties were informed prior to the start of the hearing that recording of the dispute resolution hearing is prohibited.

Issue(s) to be Decided

Are the tenants entitled to compensation from the landlord for ending the tenancy and not using the property for the intended purpose, further monetary compensation, and to recover the cost of the filing fee?

Background and Evidence

The tenancy began on June 1, 2015 with the original landlord. The landlords purchased the property from the original landlord and the landlords and tenants entered into a written tenancy agreement for a tenancy start date of March 1, 2021. The tenancy ended on May 11, 2021. The monthly rent at the end of the tenancy was \$1,352. The rental unit was in the lower level of a home.

Filed into evidence was a copy of the new written tenancy agreement.

12 months' compensation –

The tenant submitted that they vacated the rental unit on May 11, 2021, because they received the Notice from the landlords.

This Notice issued by the landlords was dated April 25, 2021, and listed an effective move-out date of July 1, 2021. Filed into evidence was a copy of the Notice.

As a reason for ending the tenancy, the Notice listed that the rental unit will be occupied by the landlord or the landlord's spouse.

The tenant submitted that they provided the landlords a written, 10-day notice they were ending the tenancy earlier than the effective date listed on the Notice, and vacated on May 11, 2021.

In support of their application, the tenant said the landlords did not act in good faith when issuing the Notice. The tenant submitted that the landlords moved into the upper level and not long after, issued the Notice stating their intent to occupy the lower level.

The tenant submitted on their application that since they gave the landlords their 10-day notice to vacate, the landlords proceeded to "rip up the floors, cosmetically renovate and furnish the upstairs unit. The unit is now rented as Air B&B. Charging \$346/night. The landlord is now doing renovations to the lower unit."

The tenant pointed to the landlord's photographic evidence of the lower rental unit that show the landlords have made repairs to the rental unit, such as moving a smoke alarm to another location and patching walls.

The tenants submitted that during online searches, they discovered that the landlords advertised the upper unit as an Air B&B and then listed the upper unit for rent. Filed in evidence were copies of the advertisements.

The tenant referred to and read from Tenancy Policy Guideline 2.a (Policy) in support of their argument that the landlords have not complied with their obligations. The tenant submitted that the landlords reclaimed the rental unit as their living space, but are not occupying the entire house as their own space. In addition, the tenant alluded to the landlords reconfiguring the space and submitted that there was one fuse box for the two units.

The tenant submitted that they are entitled to compensation equivalent to 12 months' rent, in the amount of \$16,224, as the landlords have not fulfilled the stated purpose listed on the Notice.

Separate monetary claim –

Although the tenants claimed approximately \$10,000 in their application, the monetary order worksheet reflects a different amount, which was \$2,641. The amount included claims for two Canada Post mail forwarding expenses, cleaning of the rental unit and their new rental unit, moving boxes, appliances, paint, cleaning supplies, and building supplies.

The tenants submitted that the monthly rent in their new home was \$700 per month more.

*Landlords' response-*

Upon direct examination by counsel, the landlord submitted they bought the residential property on February 28, 2021, and moved into the upper unit in March 2021.

The landlord submitted that the two units in the home were separate, self-contained suites with no shared facilities and separate entrances.

The landlord submitted they had no intentions of moving into the lower rental unit when they purchased the home, but later realized the lower unit would work better for their family. The landlord submitted they moved into the lower unit on May 15, 2021, after the tenants vacated on May 11, 2021.

The landlord confirmed that the upper unit is now rented to a tenant, who moved in on October 1, 2021.

Counsel separately submitted that the rental unit has been used for the stated purpose, as the landlords are living there, fulfilling the requirements of the Act.

Counsel submitted that the landlords did not reclaim the rental unit as there are two separate suites.

As to the tenants' separate monetary claim, counsel submitted that there were no details of the claim and they have not made their case.

### Analysis

After reviewing the relevant evidence, I provide the following findings. My findings are based on a balance of probabilities.

The undisputed evidence shows that the tenants were issued a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49(3) of the Act. In this case, the Notice listed that the rental unit will be occupied by the landlord or landlord's spouse.

Therefore, the landlord must occupy the rental unit for six months starting within a reasonable amount of time after the tenancy ended to fulfill the purpose stated on the Two Month Notice that was served upon the tenants.

Section 51(2) provides that if 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** if 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, the tenant is entitled to compensation equivalent of 12 months' rent under the tenancy agreement.

In this case, it appears to me that the main argument put forward by the tenants is that the landlords have not satisfied their good faith requirement in issuing the Notice. I arrived at this conclusion based upon the undisputed evidence that the landlords are currently occupying, and began occupying, the rental unit shortly after the tenants vacated, which was the reason listed on the Notice. The tenants' own evidence shows the landlords living in the lower rental unit.

Although the tenants cited Policy 2.a, I do not find this applies to this situation. Specifically, this Policy states, in part, the following:

*If a landlord has rented out a rental unit in their house under a tenancy agreement, the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord*

*can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room, or using a carriage home or secondary suite on the residential property as a recreation room. A landlord cannot reclaim the rental unit and then reconfigure the space to rent out a separate, private portion of it. In general, the entirety of the reclaimed rental unit is to be occupied by the landlord or close family member for at least 6 months.*

When the landlords took ownership of the residential property, the home contained two rental units, with the lower rental unit being occupied by the tenants.

I find the landlord submitted sufficient evidence to show that each rental unit was separate, on different levels, and were self-contained. There was no evidence that the two rental units shared facilities, such as kitchen and bathroom.

The tenant argued that there was one fuse box for the home. However, I find this is not uncommon in homes with two separate units and does not take away from the fact that the units were completely separate living spaces.

The landlords lived in the separate, upper level exclusively after they purchased the property and therefore, I find they did not *reclaim* the lower rental unit as their living space.

In addition, I do not find it unreasonable for a landlord to make minor alterations to the rental unit upon their first time living there. I do not find that wall patching or relocating a smoke alarm to be significant, or the rental unit was reconfigured in any way. I find nothing in the Act prohibits an owner from making renovations once they moved into their home.

For all these reasons, I find the tenant has submitted insufficient evidence to support their application for monetary compensation as I find that the landlords have occupied the rental unit for at least 6 months' duration, the stated purpose, beginning within a reasonable period after the effective date of the notice. In this case, that period was within four days, which I find to be reasonable.

Tenants' separate monetary claim –

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove *each* of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlords. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenants did whatever was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

For the reasons stated above, I find there is insufficient evidence that the landlords violated the Act. I find the Notice was given to the tenants, as allowed under the Act, and the landlords used the rental unit for the stated purpose.

For this reason, I find the tenants submitted insufficient evidence to support their monetary claim against the landlords.

As a result of all of the above, I dismiss the tenants' entire application for 12 months' monetary compensation, for separate monetary compensation, and for recovery of their filing fee, without leave to reapply.

Conclusion

For the above reasons, I have dismissed the tenants' application, including their request to recover the filing fee, without leave to reapply.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 2, 2022

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Residential Tenancy Branch