



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Remax City Realty  
and [tenant name suppressed to protect privacy]

## DECISION

**Dispute Codes**      MNECT FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

While the tenants attended the hearing by way of conference call, the landlord did not. I waited until 1:41 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenants were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenants were clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The tenants confirmed that they understood.

The tenants provided sworn, undisputed testimony that the landlord was served with the tenant's application for dispute resolution and evidence package on September 15, 2021 by way of registered mail. The tenants provided the tracking information in their evidence package. In accordance with sections 88, 89, and 90 of the *Act*, I find the landlord deemed served with the tenants' application and evidence for this hearing on September 19, 2021, 5 days after mailing. The landlord did not submit any written evidence for this hearing.

**Issues(s) to be Decided**

Are the tenants entitled to a monetary award for the landlord's failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

Are the tenants entitled to recover the filing fee for this application?

**Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on July 1, 2019, and was to end on June 30, 2021. Monthly rent was set at \$4,700.00, payable on the first of the month. The tenants testified that the landlord had collected a security deposit, which the landlord still holds.

The tenants filed this application as they had entered into a fixed-term tenancy agreement with the landlord, which was to end on June 30, 2021 as the landlords wanted to re-occupy the property. The tenants submitted a copy of the tenancy agreement which is initialed by both parties that the tenancy was to end on June 30, 2021 in order for the "owner move back", as stated on the tenancy agreement. The tenants testified that the home was listed and sold instead, as shown in the tenants' evidentiary materials. The tenants are seeking compensation equivalent to 12 month's rent for the landlord's failure to use the property as stated.

**Analysis**

Residential Tenancy Policy Guidelines #2A and #50 addresses compensation that a tenant may be entitled to if the landlord serves the tenant with a section 49 Notice to End Tenancy for landlord's use, and fails to fulfill their obligations within a reasonable amount of time:

Residential Tenancy Policy Guideline #2A states:

***E. CONSEQUENCES FOR NOT USING THE PROPERTY FOR THE STATED PURPOSE***

***Residential Tenancy Act***

*A tenant may apply for an order for compensation under section 51 of the RTA if a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:*

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy,*
- or used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.*

*The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under section 49 of the RTA and that they used the rental unit for its stated purpose for at least 6 months.*

As stated in Residential Tenancy Policy Guideline #50:

*The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.*

As noted above, a tenant may apply for compensation under section 51 of the Act if a landlord fails to fulfill their obligations after serving the tenant with a Notice to End Tenancy under section 49 of the Act. In consideration of the evidence before me, I am not satisfied that the tenants were served with a 2 Month Notice to End Tenancy pursuant to section 49 of the Act.

As the tenancy did not end pursuant to a Notice to End Tenancy under section 49 of the Act, the compensation provision of 12 times the monthly rent does not apply. Accordingly, the tenants' application for monetary compensation is dismissed without leave to reapply.

As the filing fee is normally awarded to the successful party after a hearing, I dismiss the tenants' application to recover the filing fee without leave to reapply.

### **Conclusion**

The tenants' entire application is dismissed 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*.

Dated: March 15, 2022