



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GUANG XIN DEVELOPMENT LTD. INC.NO.  
BC0883333 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 respondents pursuant to section 72.

PG and TD appeared for the tenant applicants in this hearing. NF and CF appeared for the landlord respondents. MY appeared as agent for the new owners of the property, who are also named a respondent. These parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. All parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. All parties confirmed that they understood.

The respondents confirmed receipt of the tenants' application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the respondents duly served with the tenants' application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

### **Issues(s) to be Decided**

Are the tenants entitled to a monetary award for the purchaser'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 a monetary order for additional losses?

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 month-to-month tenancy began on February 1, 2013, and ended on July 31, 2021 after the tenants were served with a 2 Month Notice to End Tenancy For Landlord's Use on May 31, 2021. Monthly rent was set at \$2,132.00, payable on the first of the month. The landlords had collected a security deposit in the amount of \$1,000.00, which was returned to the tenants.

The tenants filed this claim for compensation was the tenants were served with a 2 Month Notice the following reason: "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". A copy was included in the tenants' evidence.

The tenants are seeking compensation as the new owner of the home did not use the home for the stated purpose on the 2 Month Notice. MY confirmed in the hearing that the home has been re-rented to new tenants.

In addition to the compensation payable under section 51(2) of the *Act*, the tenants are also requesting monetary orders for losses. The tenants' monetary claims are set out in the table below:

<b>Item</b>	<b>Amount</b>
Compensation under section 51(2)	\$25,584.00
Moving Expenses-TD	500.00
Moving Expenses-PG	400.00
Lost Wages-PG	1,000.00
Title Search	55.00
Registered Mailing costs	12.00
Filing Fee	100.00
<b>Total Monetary Order Requested</b>	<b>\$27,651.00</b>

MY testified that the new owners are investors, and never had the intention to occupy the property. MY testified that they had never asked the landlords to give the tenants a 2 Month Notice to End Tenancy in order for the purchaser or close family to occupy the home, and that they had purchased the home with the understanding that the home would be vacant upon possession. MY testified that the new owners were unaware of any issues until they were served with this application for dispute resolution.

The landlords testified in the hearing that the purchasers were aware that the home was tenanted, and that the tenants wished to stay. The landlords testified that they were under the impression that the new owners would continue with the tenancy until the landlords were abruptly informed through their realtor after the offer was accepted that the new owners wanted vacant possession of the property in order for their family to move in.

The landlords and landlord's realtor, CS, confirmed in the hearing that they never received a letter from the new owners or their realtor confirming that they required the landlords to serve the tenants with a 2 Month Notice to End Tenancy for Landlord's Use. The landlords submitted in their evidentiary materials a copy of a text message showing a request from the buyer's realtor stating the following: the buyer requested for the seller to deliver vacant possession on completion.

### **Analysis**

Section 51(2) of the Act reads in part as follows:

*51(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*

*(a) 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*

*(b) 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.*

*(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 the case may be, from*

*(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or*

*(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

I have considered the testimony and evidence of both parties, and I find that it was undisputed that the purchasers of the home re-rented the home instead of occupying it. However, I find that in this case, although the tenants were served with a 2 Month Notice by their landlords, the evidence does not support that the purchasers of the home had asked the landlords in writing to serve the tenants with a 2 Month Notice to End Tenancy in order to occupy the home.

Although the landlords may have had good intentions by serving the tenants with a 2 Month Notice as soon as possible, I find that the landlords had done so before receiving the required written request from the purchasers, which was never received by the landlords or tenants. Due to the unfortunate circumstances, the tenants had decided to move out instead of disputing the 2 Month Notice, and suffered a considerable loss in having done so. Although I am sympathetic towards the fact that the tenants suffered a great loss, I am not satisfied that their losses are associated with any contravention of the *Act* by the purchasers of the property. Accordingly, the tenants' claim for compensation under section 51(2) of the *Act* is dismissed without leave to reapply.

The tenants also applied for compensation for other losses associated with the end of this tenancy including lost wages and moving costs.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

***Liability for not complying with this Act or a tenancy agreement***

**7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenants bear the burden of establishing their claim on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

In consideration of the evidence before me, I find that the tenants had moved out after being served with the 2 Month Notice by their landlords. As noted above, I am not satisfied that the purchasers had provided the landlords with a written request to do so. I find that perhaps out of a misunderstanding of the process and requirements the landlords had prematurely served the tenants with the 2 Month Notice, which the tenants did not dispute. As noted above, I do not find that the losses claimed were the result of the intentional actions of any of the respondents. I do not find the purchasers had contravened the *Act* as they had never provided the landlords with a written request to end the tenancy pursuant to section 49 of the *Act*. I accept the testimony of the landlords that they had felt bad about ending the tenancy, but did so in order to comply with the *Act* rather than contravene it. Accordingly, I dismiss the remainder of the tenants' claims for compensation without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenants were not successful with their claims, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application. The tenants must bear the cost of this filing fee.

**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 21, 2022

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Residential Tenancy Branch