



# 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 in response to an Application for Dispute Resolution filed by the Tenants on July 20, 2021 (the “Application”). The Tenants applied for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property and reimbursement for the filing fee.

The Tenants appeared at the hearing. The Landlord appeared at the hearing with their spouse, F.L., and their son-in-law, R.H. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and 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 from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property?
2. Are the Tenants entitled to reimbursement for the filing fee?

### Background and Evidence

The Tenants sought \$11,400.00 in compensation pursuant to section 51 of the *Residential Tenancy Act* (the “Act”) based on the Landlord failing to follow through with the stated purpose of a Two Month Notice to End Tenancy for Landlord’s Use of Property dated May 05, 2021 (the “Notice”).

The Landlord testified as follows. There was a verbal tenancy agreement between the parties. The Landlord does not know the start date of the tenancy. The tenancy was month-to-month. Rent was \$950.00 per month due on the first day of each month. The Tenants paid a \$425.00 security deposit.

The Tenants agreed with the above and testified that the tenancy started July 01, 2017.

The parties agreed the tenancy ended June 30, 2021.

The Notice was submitted. The grounds for the Notice are:

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 Landlord provided the name and address of the purchaser on the Notice as required. The effective date of the Notice was July 01, 2021.

The Tenants testified as follows. The Landlord told the Tenants they sold the rental unit and gave the Tenants the Notice. The Tenants asked to talk to the new owner and the Landlord told them they could not do so. The Tenants moved out. The Tenants found out that the rental unit had not been sold and is still for sale. Further, the Tenants found out that the Landlord still owns the rental unit and the person named on the Notice as a purchaser is the Landlord’s realtor.

R.H. testified as follows. The Landlord intended to sell the rental unit. The Landlord thought the rental unit would sell and took an offer on another property. All conditions for the sale of the rental unit had not been satisfied when the Notice was issued. There was no purchaser of the rental unit when the Notice was issued. There was no written request from a purchaser to issue the Notice when the Notice was issued. The person named on the Notice as the purchaser was not a purchaser of the rental unit.

R.N. submitted that the Landlord issued the Notice despite a lack of understanding or knowledge of the purpose of the Notice and stated that the Landlord's intention should have been communicated to the Tenants better. R.N. submitted that the Landlord thought the Notice indicated to the Tenants that the Landlord planned to sell the rental unit. R.N. testified that the Landlord completed the Notice and issued it to the Tenants without consulting anyone about the Notice. R.N. denied that the Landlord told the Tenants they could not contact the new owner of the rental unit. R.N. suggested that the Tenants knew the Notice was not valid. R.N. submitted that the Notice was a miscommunication and that the Tenants could have talked to the Landlord if they had concerns about the Notice.

In reply, the Tenants denied knowing the Notice was not valid.

The Tenants submitted the Notice.

The Landlord submitted the following documentary evidence:

- Photos that are irrelevant to the claim
- A Contract of Purchase and Sale in relation to the Landlord purchasing another property
- A letter from the Landlord's realtor stating that the rental unit was listed for sale April 27, 2021 and the listing was still active as of August 15, 2021
- Written submissions of the Landlord

### 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;
- (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Sections 51(2) and (3) of the *Act* state:

(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.

When tenants apply for compensation pursuant to section 51(2) of the *Act*, it is the landlord who has the onus to prove they followed through with the stated purpose of the notice to end tenancy within a reasonable period after the effective date of the notice

and used the rental unit for the stated purpose for at least six months. It is also the landlord who has the onus to prove extenuating circumstances. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I find the stated purpose of the Notice was not accomplished because R.N. acknowledged that all of the conditions for the sale of the rental unit had not been satisfied, there was no purchaser and there was no written request about a purchaser or close family member intending to occupy the rental unit when the Landlord issued the Notice. Further, the Landlord's evidence shows that the rental unit had not been sold as of August 15, 2021, a month and a half after the effective date of the Notice. In the circumstances, the stated purpose of the Notice was not accomplished within a reasonable period after the effective date of the Notice or used for that stated purpose for at least six months because the rental unit had not been sold a month and a half after the effective date of the Notice let alone been occupied by a purchaser or their close family member.

I find the Landlord is the one responsible for the failure to accomplish the stated purpose of the Notice because the Landlord issued the Notice prior to having grounds to do so. It is the Landlord's actions that resulted in the stated purpose not being accomplished.

I find the Landlord is arguing that extenuating circumstances should relieve the Landlord of their obligation to pay the Tenants compensation pursuant to section 51(2) of the *Act*. The Landlord submits that the extenuating circumstances are that the Landlord did not understand or have knowledge of the purpose of the Notice and issued it without consulting anybody. The Landlord is also seeking to blame the Tenants for the consequences of issuing the Notice.

RTB Policy Guideline 50 addresses extenuating circumstances as follows:

#### E. EXTENUATING CIRCUMSTANCES

An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements. These are circumstances where it would be unreasonable and unjust for a landlord to pay

compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal, but did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.

(emphasis added)

I have concerns about the credibility of the argument that the Landlord obtained the Notice, completed it, signed it and issued it to the Tenants without understanding or having knowledge of the purpose of the Notice because it does not accord with common sense that the Landlord would do this.

However, accepting that the Landlord did not understand or have knowledge of the purpose of the Notice, this is not an extenuating circumstance because the Landlord was expected to obtain assistance with understanding the Notice and its purpose prior to issuing it to the Tenants. The Landlord is expected to know their rights and obligations under the *Act* and is expected to obtain assistance if they do not know their rights and obligations. Further, it was completely within the Landlord's control as to whether they obtained assistance with understanding the Notice prior to issuing it. If the Landlord chose to issue the Tenants a signed legal document that the Landlord did not understand, the Landlord is responsible for bearing the consequences of this.

Further, the Tenants had no responsibility to ensure the Landlord had grounds to issue the Notice. The responsibility to ensure the Landlord had grounds to issue the Notice fell solely with the Landlord.

Given the above, I do not accept extenuating circumstances prevented the Landlord from accomplishing the stated purpose of the Notice. I am satisfied section 51(2) of the *Act* applies and the Landlord must pay the Tenants 12 times the monthly rent payable under the tenancy agreement being \$11,400.00 (\$950.00 x 12).

Given 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 \$11,500.00 and are issued a Monetary Order in this amount.

### Conclusion

The Application is granted. The Tenants are entitled to \$11,500.00 and are issued a Monetary Order in this amount. This Order must be served on the Landlord and, if the Landlord 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: March 04, 2022

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Residential Tenancy Branch