



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FF

### Introduction

This hearing was convened as the result of the tenants' application for dispute resolution seeking remedy under the Residential Tenancy Act (Act). The tenants applied for:

- compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice); and
- to recover the cost of the filing fee.

The tenants attended the hearing; however, the landlord did not attend the hearing.

The tenant stated they served the landlord with their application for dispute resolution and Notice of Hearing by registered mail on September 3, 2021. The tenants filed the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

Additionally, the landlord filed documentary evidence in advance of the hearing, which the tenants acknowledged receiving.

I accept the tenants' evidence and find that the landlord was served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the landlord's absence.

The tenants were informed at the start of the hearing that recording of the dispute resolution is prohibited.

The tenants were provided the opportunity to present their evidence orally and make submissions to me.

I have reviewed all relevant evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this Decision.

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

**Procedural matter –**

Rules 7.4 provides as follows:

**7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of the landlord to present their responsive evidence at the hearing, I decline to consider their evidence. Therefore, I find the tenants' application is unopposed.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation from the landlord and to recover the cost of the filing fee?

Background and Evidence

The tenants submitted that this tenancy with another landlord began in September 2012 and ended on June 30, 2021. The monthly rent at the end of the tenancy was \$1,860. The tenants' monetary claim is \$22,320, equivalent of 12 times the monthly rent payable under the tenancy agreement for receiving a landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice), as it has not been used for the stated purpose listed on the Notice.

In support of this claim, the tenants testified that they received the Notice from their former landlord, which listed an end of tenancy date of June 30, 2021. The tenants submitted a copy of the Notice, which was dated April 27, 2021, and signed by their former landlord. As a reason for ending the tenancy, the former landlord listed that all 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 tenants said they moved out of the rental unit on June 30, 2021 pursuant to the Notice.

The tenant submitted that they discovered their former rental unit was listed for rent shortly after they moved out, with the asking monthly rent of \$2,800. The tenants submitted copies of the advertisements, which included a copy of the rental unit being rented. I note these listings were filed on August 16, 2021.

The tenants submitted that they are entitled to compensation equivalent to 12 months' rent in the amount of \$22,320, as the landlord has not used the rental unit for the stated purpose listed on the Notice as the purchaser never occupied the rental unit.

### Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

In the case before me, the undisputed evidence is that the tenant's previous landlord issued the tenants a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act, for a move-out date of June 30, 2021. The tenants complied with the move-out date.

The landlord marked the Notice indicating that all 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.

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.

Under section 51(3) of the Act, the landlord may be excused from paying this amount if extenuating circumstances prevented the landlord from accomplishing the stated purpose within a reasonable period of time after the effective date of the Notice or using the rental unit for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the Notice.

I accept the tenants' unopposed evidence that the landlord listed the rental unit for rent shortly after the effective date of the Notice, and it was re-rented for a much higher monthly rent than the tenants were paying. While the exact date the rental unit was listed is unknown, the tenants' evidence showing the advertisements was filed with their application, or August 16, 2021.

As the landlord failed to attend the hearing to present evidence as to whether they had extenuating circumstances preventing them from using the rental unit for the stated purpose, I find there is no evidence of extenuating circumstances.

I therefore find that the rental unit was not used for the stated purpose listed on the Notice for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice, in this case, June 30, 2021, as the rental unit was re-rented for a significant increase in monthly rent.

As a result, I grant the tenants a monetary award of \$22,320 as requested, which is the equivalent of monthly rent of \$1,860 for 12 months, or \$22,320, and \$100 for the cost of filing this application.

I grant and issue the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$22,420.

Should the landlord fail to pay the tenants this amount without delay, the tenants may serve the order on the landlord for enforcement purposes. The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

### Conclusion

The tenants' application for monetary compensation for the equivalent of 12 months' rent of \$22,320 and recovery of the filing fee of \$100 is granted and they have been granted a monetary order for the amount of \$22,420.

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: March 01, 2022

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Residential Tenancy Branch