



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNECT, 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 (2 Month 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 or about September 14, 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, uploaded to the RTB online portal on November 3, 2021.

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:

#### **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, except as needed to make this Decision. 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 written tenancy agreement submitted by the tenants shows the tenancy with the landlord began on April 1, 2018, for a monthly rent of \$2,800. The monthly rent at the end of the tenancy was \$2,950.

The tenants' monetary claim is \$35,400, equivalent of 12 times the monthly rent payable under the tenancy agreement, at the end of the tenancy, for receiving the landlord's 2 Month 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 landlord, listing an end of tenancy date of October 1, 2021. The tenants submitted a copy of the Notice, which was dated July 12, 2021, and signed by their landlord. As a reason for ending the tenancy, the landlord listed that the landlord or the landlord's spouse will occupy the rental unit.

On the 2 Month Notice, the landlord also listed "purchaser" information and said that the purchaser's written request for the seller to issue an eviction notice was attached. This was not the reason listed on the 2 Month Notice, however.

The tenants said they moved out of the rental unit on August 15, 2021 pursuant to the Notice.

In their application, the tenants wrote:

*Our previous landlord (\*landlord name\*), gave us a 2 month notice to end tenancy as he was selling his house. It stated that the new owner was going to be moving in. We have now seen a public listing to rent the house for \$550 more than what we were paying. We believe this was done maliciously as previously (\*landlord name\*) told us he would just "say his family was moving in" to get out of the 4 month notice he needed to give for renovations.*

[Reproduced as written except for anonymizing personal information to protect privacy]

The tenant submitted that they discovered their former rental unit was listed for rent shortly after they moved out. The tenants submitted a copy of the advertisement. I note this listing was filed on August 24, 2021. The tenants also submitted a copy of a text message conversation their cousin had with the landlord about the rental unit, asking if the rental unit advertised was for a whole house, or an upper level suite. The reply was that the rental unit was a whole house.

The tenants testified that they went to the rental unit in December 2021, to collect mail, and spoke with the occupants, who confirmed they were renting the home.

The tenants submitted that they are entitled to compensation equivalent to 12 months' rent in the amount of \$34,400, as the landlord has not used the rental unit for the stated purpose listed on the Notice as the landlord or spouse never occupied the rental unit.

To add context to this Decision, I have additionally reviewed the two pages of the landlord's evidence.

One page was a document entitled, "Tenant Occupied Property-Buyers Notice to Seller for Vacant Possession". In this document, the sellers are two individuals whose names are not known, and who have different surnames than the landlord. The purchaser listed is an individual whose surname is the same of the landlord.

The other document is entitled "Early Possession Agreement". In this document, the sellers' names are two unknown people, and refers to another name as the buyer. This buyer's name has the same surname as the landlord.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The 2 Month Notice was given to the tenants listing that the landlord or landlord's spouse will 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 landlord must pay the tenant an amount equivalent of 12 times the monthly rent payable under the tenancy agreement.

I find the tenants submitted sufficient evidence that the rental unit was advertised shortly after the tenants vacated and was re-rented at some unknown date, but at least by December 2021. I therefore find that the rental unit has not been used for the stated purpose and as a result, I find the landlord must pay the tenants the amount of \$35,400, the equivalent of 12 times the monthly rent of \$2,950.

Section 51(3) of the *Act* authorizes me to excuse the landlord from paying the tenant the equivalent of 12 times the monthly rent if, in my opinion, extenuating circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or from 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.

As the landlord failed to attend the hearing to present evidence of extenuating circumstances preventing them from using the rental unit for the stated purpose, I find there is insufficient evidence of extenuating circumstances.

As I have found the landlord must pay the tenants compensation equal to 12 times the monthly rent due under the tenancy agreement, or \$2,950, and as I have found insufficient evidence of extenuating circumstances preventing the landlord or spouse from occupying the rental unit, I find the tenants have established a monetary claim of \$35,400.

I find merit with the tenants' application and award them recovery of their filing fee of \$100, pursuant to section 72(1) of the *Act*.

As a result, I grant the tenants a monetary order of \$35,500, the equivalent of monthly rent of \$2,950 for 12 months, or \$35,400, and the cost of the filing fee of \$100.

Should the landlords 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 \$35,400 and recovery of the filing fee is granted. They have been granted a monetary order for \$35,500.

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(3) of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*.

Dated: April 11, 2022

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Residential Tenancy Branch