



# 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 in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matters

The Landlord's Agent states that they are appearing for Landlord YS and their numbered company (the “3<sup>rd</sup> Party”). The Agent states that the 3<sup>rd</sup> Party is owned by the Agent and their spouse. The Agent states that the 3<sup>rd</sup> party purchased the unit in this matter and asks that the 3<sup>rd</sup> Party be added as a Respondent. The Agent states that they have received the Tenant's application for dispute resolution, notice of hearing and evidence (the “Hearing package”) and as both Landlord YS and the 3<sup>rd</sup> Party have reviewed the Hearing Package, the 3<sup>rd</sup> Party does not require service of any documents in order to proceed. The Tenants consent to the amendment of the application to add the 3<sup>rd</sup> Party as named by the Agent. Given the consent of the Parties I amend the application to add the 3<sup>rd</sup> Party as a Respondent as named by the Agent.

Landlords PE and CE confirm receipt of the Tenant's hearing package and evidence. The Tenant confirms receipt of the Landlords' evidence. The Parties confirm that no recording devices are being used for the hearing.

It is noted that included with the evidence provided by the Agent is a document from Landlord RR, a real estate company, dated November 29, 2021 in which Landlord RR confirms receipt of the Tenant's Hearing Package. No person appeared at the hearing on behalf of Landlord RR.

#### Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

#### Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement started on September 1, 2020 and ended on November 1, 2021. Although the tenancy agreement sets out monthly rent of \$2,750.00 payable on the first day of the month the Parties agreed to reduce that monthly amount to \$2,650.00 and this amount of rent was payable for the duration of the tenancy. The security deposit has been dealt with. The Landlords PE and CE gave the Tenant a two month notice to end tenancy for landlord's use dated June 30, 2021 (the "Notice"). The effective date of the Notice is set out as November 1, 2021. The reason stated on the Notice is that "all of the conditions of 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 Notice sets out Landlord YS as the purchaser. The Notice includes the requesting buyers notice from Landlord YS dated June 30, 2021. The sale of the unit became legally binding by June 9, 2021 with all the subjects removed. On August 23, 2021 the sale agreement was amended to remove Landlord YS and add the 3<sup>rd</sup> Party or to assign the purchase of the unit to the 3<sup>rd</sup> Party from Landlord YS. The 3<sup>rd</sup> Party then approached the Tenants and offered a tenancy of the unit. The Tenants did not agree with the terms offered and declined. The unit was

thereafter rented by the 3<sup>rd</sup> Party possibly starting January 1, 2022 with monthly rent of \$3,800.00.

The Agent states that Landlord YS purchased the unit with the original good faith intention of living in the unit with their daughter who was to attend the local university. The Agent states that after the daughter visited the property the daughter determined that it was not suitably located for the daughter's attendance at the university. The Agent states that a few days before August 23, 2021 they were approached by Landlord YS who wanted to purchase a different property. The Agent states as Landlord YS was a regular client of the Agent's brokerage business the Agent offered the 3<sup>rd</sup> Party as the purchaser of the unit. The Agent states that they understood that the 3<sup>rd</sup> Party assumed the tenancy as a result of the purchase. The Agent states that they or the 3<sup>rd</sup> Party never intended to reside in the unit.

The Tenant states that the meeting with the Agent who offered the tenancy was very confusing in terms of who all the actors were. The Tenant states that they had informed the Agent that the Agent's actions were contrary to the Act. The Tenant argues that not wanting to occupy the unit is not an extenuating circumstance. The Tenant submits that the unit has been listed for sale as of March 7, 2022.

The Agent argues that as the 3<sup>rd</sup> Party never gave the Notice to the Tenants, they are not liable for any compensation to the Tenants. The Agent argues that leniency should be shown in the circumstances. The Landlords PE and CE argue that they have done nothing to breach the Act and that they are not liable for any compensation to the Tenants.

### Analysis

Section 51(2) of the Act provides that 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.

Section 51(3) of the Act provides that 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.

It is undisputed that the unit was never occupied by anyone other than the subsequent tenants. The Agent did not respond to the Tenants' submission that the unit has been placed for sale. It is unknown whether the unit has been sold and it has been over 7 months from the effective date of the Notice. Whether or not the obligations in relation to the tenancy were assigned to the 3<sup>rd</sup> Party, it is undisputed that Landlord YS was the purchaser who asked Landlords PE and CE to give the Notice. For these reasons I find that it is Landlord YS who failed to use the unit as stated on the Notice. I do not consider that a change of mind by Landlord YS based on location preferences can reasonably be seen as an extenuating circumstance that would excuse Landlord YS from paying the compensation required for not using the unit for the purpose stated in the Notice. For these reasons and based on the agreed amount of rent that was payable during the tenancy, I find that the Tenants have substantiated an entitlement to the compensation of **\$31,800.00** (\$2,650.00 x 12).

As the Tenants have been successful with their claim, I find that the Tenants are also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$31,900.00**. As only Landlord YS has been found liable for this compensation, I make the monetary order payable only by Landlord YS.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$31,900.00**. If necessary, this order may be filed in the Small Claims Court 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: May 18, 2022

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Residential Tenancy Branch