



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 a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on May 5, 2022. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51 of the *Act*

The Landlords and the Tenants both attended the hearing. The Landlords confirmed receipt of the Tenants' Notice of Dispute Resolution Proceeding and evidence package. However, the Landlords stated the package only contained a copy of the Notice of Dispute Resolution Proceeding and copies of the tenancy agreements. The Tenants had no further proof showing what was included in the package they mailed to the Landlords. No photos of the package content was provided. As such, I am not satisfied that the Tenants have sufficiently demonstrated which documents they included in their package and that they have sufficiently served the Landlords with copies of all their evidence, in accordance with the *Act*. It became apparent, after discussions, that the 2 out of the 3 missing documents in the Tenant's evidence package they served to the Landlord were actually included in the Landlords' evidence package (2 copies of the same email). The Landlords did not take issue with this email document being considered as it was already included in their evidence. The only document that could not be verified as being served by the Tenants was the photo of the drones. I decline to consider this one part of the Tenants evidence, as it has not been sufficiently served.

The Tenants confirmed they received the Landlords' evidence package. I find the Landlords sufficiently served the Tenants with their evidence.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to compensation under section 51 of the Act?

Background and Evidence

Both parties agree that monthly rent was \$2,000.00 per month. The tenancy started on October 1, 2017, and ended on September 30, 2021. The Landlords and the Tenants initially signed a fixed term tenancy agreement starting September 30, 2017, spanning until September 30, 2020. This agreement noted the following term:

At the end of this fixed length of time: (for option b, you must check either i or ii below)

- ☒ i) the landlord and tenant may agree to enter into a new tenancy agreement
 • If the landlord and tenant do not enter into a new tenancy agreement, the tenancy continues on a month-to-month basis on the same terms unless the tenant gives legal written notice to end the tenancy.

Towards the end of the initial fixed term agreement, the parties chose to sign a new tenancy agreement. This was an option for the parties at that time, but not a requirement, as noted above. The Landlords and the Tenants signed a new fixed term tenancy agreement, spanning from October 1, 2020, until September 30, 2021. Monthly rent remained at \$2,000.00 per month. The following term was included in this second agreement:

☒ C) and is for a fixed term ending on

30	Sept	2021
day	month	year

IF YOU CHOOSE C, CHECK AND COMPLETE D OR E

Check D or E ☐ D) At the end of this time, the tenancy will continue on a month-to-month basis, or another fixed length of time, unless the tenant gives notice to end tenancy at least one clear month before the end of the term.


☒ E) At the end of this time, the tenancy is ended and **the tenant must vacate the rental unit.**
This requirement is only permitted in circumstances prescribed under section 13.1 of the Residential Tenancy Regulation, or if this is a sublease agreement as defined in the Act.

Reason tenant must vacate (required): Landlord's use of property

Residential Tenancy Regulation section number (if applicable): 13.1.b

* If you choose E, both the landlord and tenant must initial here

The tenant **must move out on or before the last day of the tenancy.**

Landlord's Initials	Tenant's Initials
	

Both parties initialled the above noted term, pursuant to section 13.1.b of the Regulations.

The Tenants are requesting 12 months' compensation, pursuant to section 51(2) of the Act, because they feel the Landlords were not acting in good faith. More specifically, the Tenants stated that the Landlords maintained that their parents would be moving in, throughout the last part of their tenancy, then the property was abruptly sold right around the end of their final fixed term tenancy.

The Landlords explained that there were several extenuating circumstances which led to them selling this property, rather than using it for Landlord's Use. The Landlords stated that their initial plan all along was to move their parents into the cottage, which the Tenant's rented, but due to declining health, this was no longer an option as initially planned when signing the tenancy agreement. The Landlords provided emails and documentation showing some of the medical issues that both parents were having, which made it impractical to have them move in. The Landlords acknowledged selling the property.

Analysis

The Tenants have applied for monetary compensation, pursuant to section 51(2) of the Act, because the Landlords ended their tenancy in "bad faith."

I have reviewed the testimony and evidence on this matter, and I note that section 51 of the Act states the following:

Tenant's compensation: section 49 notice

51 (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

(1.1) *A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.*

(1.2) *If a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid.*

(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.

I note that in order for compensation to be due and payable, a valid 2 Month Notice to End Tenancy for Landlord's Use (the Notice) must be issued. In this case, there is no evidence that a Notice was issued, under section 49 of the Act. Rather, the Landlords and the Tenants agreed, in advance, via the tenancy agreement, that the Tenants would vacate the rental unit, pursuant to section 13.1.b of the Regulations.

I note the following portion of *Policy Guidelines #30 – Fixed Term Tenancies*:

B. REQUIREMENTS FOR FIXED TERM TENANCY AGREEMENTS

The Legislation sets out the requirements for tenancy agreements. A fixed term tenancy agreement must state the date the term ends.

Requirement to Vacate

A vacate clause is a clause that a landlord can include in a fixed term tenancy agreement requiring a tenant to vacate the rental unit at the end of the fixed term in the following circumstances:

- the landlord is an individual, and that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.*
- the tenancy agreement is a sublease agreement*

For example, an owner can rent out their vacation property under a fixed term tenancy with a vacate clause if they or their close family member intend in good faith to occupy the property at the end of the fixed term. There is no minimum amount of time that a landlord or close family member must occupy the rental unit. Occupancy can be part time, e.g., weekends only.

The reason for including a vacate clause must be indicated on the tenancy agreement and both parties must have their initials next to this term for it to be enforceable. The tenant must move out on the date the tenancy ends. The landlord does not need to give a notice to end tenancy or pay compensation as required when ending a tenancy under section 49. See Policy Guideline 50: Compensation for Ending a Tenancy for more information

I also note the following portion of *Policy Guideline #50 – Compensation for Ending a Tenancy*:

E. VACATE CLAUSES

There are no notice, compensation or minimum occupancy requirements if a fixed term tenancy agreement includes a vacate clause. Vacate clauses are only allowed in limited circumstances.

In accordance with the above noted excerpts from the Policy Guidelines, since the vacate clause was properly included and initialled on the most recent tenancy agreement, and since no Notice was issued, I find the Tenants are not entitled to 12 month's compensation, pursuant to section 51(2) of the Act.

I dismiss the Tenants' application, in full, without leave to reapply.

Conclusion

I dismiss the Tenants' application in full, without leave.

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: May 05, 2022

Residential Tenancy Branch