



# 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.

### Issue(s) to be Decided

Are the Tenants entitled to the compensation claimed?

Are the Tenants entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed facts: the tenancy started on November 1, 2016 and the Tenants moved out of the unit on August 31, 2021. Rent of \$1,450.00 was payable on the first day of each month. The security deposit has been dealt with. The Landlords gave the Tenants a two month notice to end tenancy for landlord’s use dated April 30, 2021 (the “Notice”). The Notice sets out an effective date of June 30, 2021 corrected to July 31, 2021. The reason stated on the Notice is that the child of the landlord or the landlord’s spouse will occupy the unit.

The Landlord submits that as the Tenants moved out later than the effective date of the Notice their son could not occupy the unit and had to reside in a different location until possession of the unit was obtained on August 31, 2021. The Landlord states that because the unit was found to be in disarray and with damages to such items as the carpets and a door, work had to be done to the unit to make it fit to occupy. The Landlord states that on September 13, 2021 they obtained an inspection of the unit to determine the extent of any repairs. The Landlord states that shortly thereafter they and their son went to another province to attend an anniversary. The Landlord states that after the anniversary and on September 28, 2021 they experienced the death of a family member and remained in that province until the family member's funeral. The Landlord provides a pamphlet setting out the funeral on October 17, 2021. The Landlord states that they returned immediately thereafter. The Landlord states that some of the son's belongings were brought into the unit in September 2021 and that the son began to occupy the unit as a residence upon return from the funeral. The Landlord states that they made repairs to the unit at the same time. The Landlord provides a photo and receipt dated October 24, 2021 for the removal of materials. The Landlord states that they are all currently residing in the unit.

The Tenant states that the unit was not occupied well into October 2021 and that during the winter months to mid January 2022 delivery packages were left sitting in the of the unit and the snow was piling up without being cleared. The Tenant states that the neighbour of the unit saw no activity at the unit until September and October 2021.

The Landlord states that no packages were being left as they have been residing at the unit. The Landlord's son, Witness MG, confirms the Landlord's evidence of repairs and events that occurred in September and October 2021. The Landlord's son states that full time occupation of the unit as a residence started on October 18, 2021 and that his remaining furnishings were brought into the unit between October 20 and 31, 2021.

### Analysis

Section 51(2) of the Act provides that 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.

It is undisputed that the Landlord's son could not occupy the unit until a month after the effective date of the Notice due to the Tenants' occupation of the unit. Given the Tenant's evidence that movement was seen at the unit during the months of September and October 2021 I find on a balance of probabilities that the Landlord has substantiated that their son started to move into the unit at that time. I also accept the Landlord's undisputed evidence that they took steps towards the repairs mid-September 2021. It is undisputed that the unit required some repairs before the occupation as a residence could occur. It is undisputed that intervening events, planned and unplanned, also occurred during September and October 2021. The Tenant did not offer any argument that these events should not have stopped the Witness from occupying the unit or were not a reasonable delay for occupying the unit immediately after the Tenants moved out of the unit. I therefore find on a balance of probabilities that the Landlord has substantiated that these intervening events reasonably delayed their son's occupation of the unit as a residence until October 18, 2021.

The only evidence to dispute the occupation after this date is the Tenant's unsupported evidence of packages and snow accumulation. Given the Landlord's denial of this evidence, I find on a balance of probabilities that the Landlord has substantiated that the unit was occupied from October 18, 2021 to current. For this reason and as the delay to

October 18, 2021 has been found reasonable, I find on a balance of probabilities that the Landlords have substantiated that the unit was used for the stated purpose within a reasonable period from the effective date of the Notice and for at least six months. The Tenants are therefore not entitled to the compensation claimed and I dismiss this claim. As the Tenants' claim has not been successful, I find that the Tenants are also not entitled to recovery of the filing fee and in effect the application is dismissed in its entirety.

Conclusion

The application is dismissed.

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: June 1, 2022

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Residential Tenancy Branch