



# Dispute Resolution Services

Page: 1

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. The Parties confirmed their exchange and receipt of evidence packages and that recording devices are not being used by them for the hearing.

### 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 under written agreement started on January 15, 2017 and the Tenants moved out of the unit on November 7 or 8, 2021. Rent of \$2,827.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected a security deposit of \$1,300.00 and a pet deposit of \$600.00. On August 26, 2021 the Landlord served the Tenants by registered mail with a two month notice to end tenancy for landlord’s use dated August 26, 2021 (the

“Notice”). The reason stated on the Notice is that the unit will be occupied by the Landlord or the Landlord’s spouse.

The Tenants state that the Landlord never occupied the unit. The Parties do not dispute that the Tenants and Landlord reside in separate units in a fourplex and that at the time the Notice was given to the Tenants the Tenants occupied a unit with an upper and lower floor while the Landlord occupied a lower unit in the adjoining fourplex.

The Landlord states that the Tenants’ lower part of the unit was occupied for one month in February 2022 by the Landlord as the Landlord placed a tv and couch in the lower unit for use by the Landlord. The Landlord states that the Landlord continued to reside in its own unit as well. The Landlord states that they waited to occupy the unit as work to paint and install laundry facilities were being done in the unit.

The Landlord states that the Tenants failed to pay rent for September and October 2022 and that the Landlord served the Tenants with a 10-day notice to end tenancy for unpaid rent. The Landlord states that the Tenants were given the option of the rent for either month becoming the one-month compensation due to the Tenants for having received the Notice. The Landlord states that the Tenants did not dispute the 10-day notice and the Landlord did not pursue an application to obtain an order of possession or the unpaid rent. The Landlord provides a copy of the first page of the 10-day notice dated October 13, 2021 and this notice sets out unpaid rent of \$2,827.00 due August 31, 2021. It is noted that this notice is on a dated Residential Tenancy Branch (the “RTB”) form. The Landlord argues that the tenancy ended as a result of the 10-day notice the tenancy and not as a result of the Notice and that the Landlord therefore is not required to adhere to the reasons for the Notice. The Landlord states that the Tenants’ late move out of the unit “hurt” the Landlord’s chances to obtain rent for November 2021.

The Tenant states that no rents were paid for October or November 2021 and that the Parties verbally agreed for the Landlord to retain the combined security and pet deposits of \$1,900.00 for October 2021 rent. The Landlord states that the Tenants deposits were paid in cash to the Tenants on August 12, 2021 and that the Tenants signed a receipt for this payment. The Tenant states that the Landlord informed the Tenants after the Tenants made this application to come and get their deposits back as the Landlord never agreed to retain the deposits. The Tenants state that the Landlord paid the deposits back to the Tenants in cash on December 8, 2021 and that the Tenants signed a receipt for this payment.

The Tenants state that the Landlord had given another tenant living in the upper unit above the Landlord a two month notice to end tenancy for landlord's use with the same reason (Landlord or spouse will occupy the unit) and that after the Tenants made this application the Landlord withdrew that two-month notice. The Tenant states that they were informed of this by that tenant who was a friend and who did not want to provide witness statements as they were concerned that the Landlord would retaliate by evicting them. The Landlord states that new tenants moved into the Tenants' upper part of the unit on June 1, 2022.

### Analysis

Section 52(e) of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must, when given by a landlord, be in the approved form. The copy of the 10-day notice sets out unpaid rent for August 31, 2021. This appears to be inconsistent with the undisputed evidence that rent is payable on the first day of each month and there is no evidence that any rents were unpaid for August 2021.

Nonetheless, the 10-day notice is on an old form that is not the current approved form and for this reason I find that the 10-day notice was not effective to end the tenancy and that the tenancy did not end as a result of the issuance of this notice.

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.

Given the Landlord's evidence that they did not believe that they had to occupy the Tenants' unit as the tenancy had ended pursuant to the 10 day notice, that the Landlord lost expected rental income for November 2021, given the Tenants' evidence that the unit was left vacant, and considering the Landlord's evidence that only a couch and tv were placed in the lower part of the unit while the Landlord continued to occupy its own residence, I find on a balance of probabilities that the Landlord did not occupy the unit as stated in the Notice. The Landlord must therefore pay the Tenants **\$33,924.00** as the 12 times the monthly rent payable under the tenancy agreement. The Tenants' claim for \$16,200.00 as set out in their application is based on their current monthly rental rate as opposed to the monthly rent paid for the unit. I consider this to be an error that does not reduce or affect the Landlord's payment obligation under the Act.

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.

The Landlord gave no evidence of any circumstances that prevented the Landlord from occupying the unit other than believing that the Notice was no longer valid for its purpose given the provision of the 10-day notice. As I do not consider this belief to be any extenuating circumstance, I find that there is no basis upon which to excuse the Landlord from paying the above noted compensation.

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 **\$34,024.00**.

#### Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$34,024.00**. 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: July 14, 2022

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Residential Tenancy Branch