



# 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 by way of conference call in response to an Application for Dispute Resolution filed by the Tenants February 14, 2022 (the “Application”). The Tenants applied for compensation from the Purchaser related to a Notice to End Tenancy for Landlord's Use of Property (the “Notice”) and reimbursement for the filing fee.

The Tenants appeared at the hearing. Nobody appeared at the hearing for the Purchaser. I explained the hearing process to the Tenants. I told the Tenants they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenants provided affirmed testimony.

The Tenants submitted evidence prior to the hearing. The Purchaser did not submit evidence. I addressed service of the hearing package and Tenants’ evidence.

The Tenants testified that the hearing package and their evidence were sent to the Purchaser at the Purchaser’s address on the Notice by registered mail. The Tenants testified that the Purchaser never moved into the rental unit as stated on the Notice. The Tenants provided documentary evidence of service with Tracking Number 140 on it and confirmed this relates to the hearing package and their evidence. I looked Tracking Number 140 up on the Canada Post website which shows the package was sent February 25, 2022, and unclaimed after two notice cards were left in relation to it.

Based on the undisputed testimony of the Tenants, documentary evidence of service and Canada Post tracking information, I find the Purchaser was served with the hearing package and Tenants’ evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “Act”). The Purchaser cannot avoid service by failing to

pick up registered mail. Pursuant to section 90(a) of the *Act*, the Purchaser is deemed to have received the hearing package and Tenants' evidence March 02, 2022. I also find the Tenants complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Purchaser. The Tenants were given an opportunity to present relevant evidence and make relevant submissions. I have considered all relevant evidence provided. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Are the Tenants entitled to compensation from the Purchaser related to the Notice?
2. Are the Tenants entitled to reimbursement for the filing fee?

### Background and Evidence

The Tenants sought \$15,600.00 in compensation pursuant to section 51 of the *Act* based on the Purchaser failing to follow through with the stated purpose of the Notice which was dated November 26, 2021.

The Tenants testified as follows.

The Tenants had a written tenancy agreement with the previous owners of the rental unit. Rent at the end of the tenancy was \$1,300.00 per month.

The Notice was served on the Tenants November 26, 2021.

The Purchaser took possession of the rental unit January 01, 2022.

The tenancy ended February 01, 2022.

The Notice was submitted. The grounds for the Notice are:

All of the conditions for 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 Purchaser is named as the purchaser on the Notice. The effective date of the Notice was January 31, 2022.

The Tenants submitted a “Tenant Occupied Property – Buyers Notice To Seller For Vacant Possession” form which was attached to the Notice and states that the Purchaser or a close family member intends to occupy the rental unit.

The Tenants testified that the Purchaser or a close family member never occupied the rental unit. The Tenants testified that the rental unit was listed for rent 11 days after they moved out and pointed to an advertisement in evidence. The Tenants advised that the advertisement was listed under someone else’s name on the rental website. The Tenants testified that the Purchaser continued to rent out the rental unit after they moved out.

The Tenants submitted the Notice and screenshots of a rental advertisement.

### Analysis

The Notice was issued pursuant to section 49(5) of the *Act* which states:

- (5) A landlord may end a tenancy in respect of a rental unit if
  - (a) the landlord enters into an agreement in good faith to sell the rental unit,
  - (b) all the conditions on which the sale depends have been satisfied, and
  - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
    - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit...

Sections 51(2) and (3) of the *Act* state:

- (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.

Pursuant to section 51(2) of the *Act*, the Tenants can claim for compensation from the Purchaser as the purchaser of the rental unit who asked the prior owners to issue the Notice.

When tenants apply for compensation pursuant to section 51(2) of the *Act*, it is the landlord or purchaser who has the onus to prove they followed through with the stated purpose of the notice to end tenancy within a reasonable period after the effective date of the notice and used the rental unit for the stated purpose for at least six months.

Pursuant to sections 49(5) and 51(2) of the *Act*, the Purchaser has the onus to prove they, or a close family member, occupied the rental unit within a reasonable period after January 31, 2022, and continued to occupy the rental unit for at least six months.

Given the Purchaser did not submit evidence or appear at the hearing, they have failed to prove they, or a close family member, occupied the rental unit within a reasonable

period after January 31, 2022, and continued to occupy the rental unit for at least six months.

Further, the Tenants provided undisputed testimony and evidence that the Purchaser listed the rental unit for rent 11 days after they moved out and therefore did not occupy the rental unit but instead re-rented it.

Given the Purchaser did not submit evidence or appear at the hearing, there is no evidence before me that exceptional circumstances prevented the Purchaser, or a close family member, from occupying the rental unit within a reasonable period after January 31, 2022, and continuing to occupy the rental unit for at least six months. Therefore, I am not satisfied section 51(3) of the *Act* applies.

Given the above, I am satisfied section 51(2) of the *Act* applies and the Purchaser must pay the Tenants 12 times the monthly rent payable under the tenancy agreement being \$15,600.00 (\$1,300.00 rent x 12 months).

Given the Tenants were successful in the Application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to \$15,700.00 and are issued a Monetary Order in this amount.

### Conclusion

The Application is granted. The Tenants are entitled to \$15,700.00 and are issued a Monetary Order in this amount. This Order must be served on the Purchaser and, if the Purchaser does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 20, 2022

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Residential Tenancy Branch