



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC

### Introduction

This hearing dealt with the tenants' application pursuant to section 67 of the *Residential Tenancy Act* (the "Act") for a monetary award for damages and loss.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Are the tenants entitled to the relief sought?

## Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The background facts are not in dispute. This periodic tenancy originally began on August 1, 2017. Monthly rent at the end of the tenancy was \$3,280.00 payable on the first of each month. A security deposit of \$1,600.00 was collected at the start of the tenancy and has been dealt with in accordance with the *Act*. The rental unit is a single detached home.

There was a previous hearing under the file number on the first page of this decision dealing with the tenants' seeking the same relief as this present application where the tenants' application was dismissed with leave to reapply.

The named respondents are the purchasers of the rental property who gave written request on September 29, 2020 to the previous owners to issue a 2 Month Notice. Pursuant to the written request the previous owners issued a 2 Month Notice dated October 17, 2020 with an effective date of December 31, 2020. The notice identifies the respondent MH as one of the purchasers and provides the reason for the tenancy to end as "the rental unit will be occupied by the landlord or the landlord's close family member".

The tenancy ended in accordance with the 2 Month Notice with the tenants vacating the rental unit on December 31, 2020. Shortly, thereafter the landlord entered a new tenancy agreement with other occupants on January 15, 2021 for a fixed-term tenancy to commence February 1, 2021 and end on January 31, 2022. The parties agree that the landlord purchasers have never resided in the rental unit as they indicated was their intention on the 2 Month Notice.

The landlords submit that on September 1, 2020 they entered a listing contract with a real estate agent to sell their residence in a neighboring municipality. Simultaneously, the landlords were seeking a new property to occupy with MH's mother who was planning to immigrate from overseas in February 2021. The landlords entered a contract to purchase the rental property in September 2020 and gave written request to the sellers to issue a 2 Month Notice.

The landlords submit that after the 2 Month Notice was issued they faced unexpected circumstances that prevented them from occupying the rental property as they originally planned. The landlords say that due to the ongoing Covid19 pandemic they were unable to sell their residence. The landlord called their realtor as a witness and they confirmed that they were unable to sell the landlord's property for the amount sought.

The landlords also testified that due to the federal travel restrictions the MH's mother was unable to travel to Canada and occupy the rental property with them. The landlords submit that due to these circumstances they chose to rent out the rental property and found a new occupant to take possession as of February 1, 2021.

The new occupant was called as a witness and testified that the landlords indicated that, despite entering into a fixed-term tenancy for one-year, the landlords may subsequently issue a 2 Month Notice for Landlord's Use if MH's mother was able to travel to the province.

The landlords characterize the circumstances as extenuating and prevented them from accomplishing the purpose stated on the 2 Month Notice of October 17, 2020.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51(2) of the *Act* states that a landlord, or the purchaser of a property, must pay the tenant an amount that is equivalent to 12 times the monthly rent payable under the tenancy agreement if a tenant receives a notice to end tenancy for landlord's use of property and:

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

- (b) the rental unit is not used for that stated purpose for at least 6 months duration, beginning within a reasonable period after the effective date of the notice,

In the 2 Month Notice the landlord indicates that the reason for the tenancy to end is that the rental unit will be occupied by the landlord or the landlord's spouse. I note that the notice was issued by the previous owner and ought to have indicated that, "All of the conditions for 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". Nevertheless, I find that the parties all understood the intention of the 2 Month Notice and the reasons for its issuance. I find that the purchasers, the named respondent landlords in the present application, were required to occupy the rental unit.

The parties confirm that the tenancy ended on December 31, 2020 in accordance with the notice. The landlords did not occupy the rental unit but instead rented it out to other occupants commencing February 1, 2021.

Section 51(3) 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 the case may be, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
- (b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice

Residential Tenancy Policy Guideline 50 provides some examples of extenuating circumstances including death and wildfires. The Guideline specifically cites changing one's mind or failing to adequately budget to be examples of circumstances that may not be extenuating. The onus lies with the landlord to establish, on a balance of probabilities, that extenuating circumstances exist.

I do not find the present circumstances to be an example of extenuating circumstances. I take judicial notice of the ongoing Covid19 pandemic and the effects the public health orders and travel restrictions have had for international travel and immigration. I find that while the pandemic was not something within the control of the landlords, what they chose to do in the face of it was.

The reason provided on the notice for the tenancy to end is that the rental unit will be occupied by the landlord.

While I accept that MH's mother was unable to travel to the province at the time they had intended due to travel restrictions, I find no cogent reason why this prevented the landlords from accomplishing the purpose stated on the 2 Month Notice. The only requirement, pursuant to the notice was for the landlords MH and/or their spouse FH to occupy the rental unit for residential purposes. There was no requirement that MH's mother also occupy the rental unit and I find their inability to travel to the province, while outside of the landlords' control, is not a circumstance that I find prevented the landlords themselves from occupying the property.

I further find insufficient evidence to characterize the landlords' inability to sell their residence in order to finance their move to the rental unit as an extenuating circumstance. The Covid19 pandemic was ongoing at the time the landlords entered into a listing agreement with their realtor in September 2020. While the landlords and their realtor attribute the inability to find a purchaser for their residence to the ongoing pandemic, I note that the evidence before me is that the landlords themselves were able to purchase the rental property. It is evident that while the ongoing pandemic may have had some effect on the real estate market, transfer of property was occurring throughout this time. While I find that the landlords did not control the market, I find it was ultimately their choice not to sell their residence while completing the purchase of the rental property.

I further find that the landlords actively chose to find a new occupant for the rental property instead of opting to move into the property as indicated on the 2 Month Notice and rent out their residence. I further note that the landlords entered into a fixed-term tenancy agreement with their new occupant guaranteeing that they would not occupy the rental unit until February 1, 2022 at the earliest.

I find that the circumstances described by the landlords to not be extenuating but the inevitable and foreseeable result of their choices. While the landlords were not

responsible for the travel restriction preventing MH's mother from travelling to the province, they chose not to move into the rental unit. While the landlords were not able to control the real estate market in the province, they ultimately chose the price to list their property and declined to sell the property. When faced with two properties in their possession, the landlords opted to rent out the rental property to a new occupant rather than occupy it themselves and rent out their previous residence. I find that the landlords made active choices to use the rental property for purposes other than that stated on the notice to end tenancy.

I find, based on the undisputed evidence of the parties, that the purchasers did not use the rental unit for the purposes stated on the 2 Month Notice. I find that the circumstances that prevented the purchasers from using the rental unit for its stated purpose is not extenuating and therefore does not excuse the purchasers from their liability under the *Act*.

Consequently, in accordance with section 51(2) of the *Act*, I find that the tenants are entitled to a monetary award of \$39,360.00, the equivalent of 12 times the monthly rent payable under the tenancy agreement.

### Conclusion

I issue a monetary order in the tenants' favour in the amount of \$39,360.00 as against the landlords. The landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: August 9, 2022

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Residential Tenancy Branch