



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

This hearing was convened as a result of the Tenants' Application for Dispute Resolution made on January 13, 2022. The Tenants applied for compensation pursuant to section 51(2) of the Residential Tenancy Act (the Act) and to recover the filing fee pursuant to section 72 of the Act.

The Tenants attended the hearing on their own behalf. The Landlord named in the Tenants' application attended the hearing and advised that he was, at all material times, acting as the agent of the owner, BB. During the tenancy, the Landlord exercised powers and performed duties under this Act and the tenancy agreement. Therefore, I find the Landlord named in the Tenants' application is a landlord as defined under section 1 of the Act. The Tenants and the Landlord provided affirmed testimony.

LP testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail on January 28, 2022. The Landlord acknowledged receipt. No issues were raised with respect to service or receipt of these documents during the hearing. Therefore, pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

The Landlord testified the documentary evidence submitted in response to the application was served on DP in person on August 21, 2022. The Tenants testified they have not had sufficient opportunity to review and consider the evidence relied upon by the Landlord.

Rule of Procedure 3.15 confirms that evidence that a respondent intends to rely upon "must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing." In this case, the evidence was received by DP and was uploaded to the Residential Tenancy Branch Dispute Management System only two

days before the hearing. As the evidence was served and submitted late, and the Tenants testified they had not had an opportunity to review and consider it, I find it is excluded from consideration.

The parties were advised that Rule of Procedure 6.11 prohibits the recording of dispute resolution proceedings.

The parties were given an 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

1. Are the Tenants entitled to compensation pursuant to section 51(2) of the Act?
2. Are the Tenants entitled to recover the filing fee pursuant to section 72 of the Act?

#### Background and Evidence

The parties agreed the tenancy began on April 15, 2018. The Landlord confirmed that his brother, BB, purchased the rental property in 2020 and assumed the existing tenancy. The parties agreed the Tenants vacated the rental unit on January 9, 2021. The parties agreed that monthly rent of \$1,200.00 was due. The Tenants paid a security deposit of \$1,200.00, which was returned at the end of the tenancy. A copy of the tenancy agreement was submitted into evidence.

The Tenants seek compensation based on a Two Month Notice to End Tenancy for Landlord's Use of Property dated November 30, 2020, which had a stated effective date of January 31, 2021 (the Two Month Notice). The Two Month Notice was issued on the basis that the rental unit would be occupied by the landlord or the landlord's close family member. LP testified to her understanding that the rental unit would be occupied by BB and his girlfriend. However, the Tenants testified that they do not believe that BB moved into the rental unit for six months, and that BB always had an intent to sell the rental property. In support, the Tenants submitted a BC Assessment document which indicated the Landlord sold the rental property on July 29, 2021.

In reply, the Landlord acknowledged that the stated effective date of the Two Month Notice was January 31, 2021. However, during the hearing, the Landlord read aloud from a letter he testified was received from the Tenants. The Landlord testified the letter stated that it was a 10-day notice to end tenancy in which the Tenants advised of their intention to end the tenancy early on January 9, 2021. The Tenants did not dispute that the letter described by the Landlord was sent.

The Landlord also testified that BB moved into the rental unit immediately after the Tenants moved out. He acknowledged that BB did not always sleep at the rental unit due to addiction issues but testified that BB occupied the rental unit continuously until the property was sold on July 29, 2021. The Landlord submitted that BB occupied the rental property for more than six months.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49(3) of the Act allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. In this case, the Two Month Notice was issued on the basis that the rental unit would be occupied by BB and his girlfriend.

Section 51(2) of the Act provides that compensation may be due if the landlord does not take steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice, or if 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 this case, for the reasons that follow, I find there is insufficient evidence before me to grant the relief sought. Rather, after careful consideration, I find that the tenancy ended early on January 9, 2021, pursuant to a 10-day written notice to end tenancy issued by the Tenants under section 50 of the Act. I also accept that BB moved into the rental unit on January 9, 2021 and occupied the rental unit continuously until the property was sold on July 29, 2021. The Tenants' evidence to the contrary was based more on speculation and belief than on objective, first-hand evidence. I also find the period from

January 9 to July 29, 2021 exceeded six months. Therefore, I find it is more likely than not that BB used the rental unit for the purpose stated in the Two Month Notice for more than six months, beginning immediately after the tenancy ended.

Considering the above, I find that the Tenants' request for compensation under section 51(2) of the Act is dismissed without leave to reapply. As the Tenants have not been successful, I also find that the Tenants' request to recover the filing fee under section 72 of the Act is dismissed without leave to reapply.

### Conclusion

The Tenants' application is dismissed without leave to reapply.

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 23, 2022

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Residential Tenancy Branch