



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC

### Introduction

The Tenants seek an order pursuant to s. 51(2) of the *Residential Tenancy Act* (the “Act”) for compensation equivalent to 12 times monthly rent.

G.D. and D.D. appeared as the Tenants. T.P. appeared as the Landlord and was joined by her partner, J.B..

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

### Issues to be Decided

- 1) Are the Tenants entitled to compensation under s. 51(2) equivalent to 12 times monthly rent payable under the tenancy agreement?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on June 1, 2017.
- The Landlord obtained vacant possession of the rental unit on December 13, 2021.
- Rent of \$1,148.00 was payable on the first day of each month when the tenancy ended.

A copy of the tenancy agreement was put into evidence by the parties.

The Landlord testified to serving the Tenants with a Two-Month Notice to End Tenancy on November 15, 2021 (the "Two-Month Notice"). A copy of the Two-Month Notice was put into evidence and indicates that it was issued on the basis that the father or mother of the landlord or the landlord's spouse would be occupying the rental unit.

The Landlord and J.B. testified that J.B.'s father has Parkinson's disease and dementia and that both of J.B.'s parents are over 80 years old. The Landlord and J.B. further testified that J.B.'s parents sold their property in an adjacent community in October 2021 and the plan was for them to move into the rental unit, which they say is what prompted the issuance of the Two-Month Notice. The parents are said to have moved in with the Landlord and J.B. after their property had sold. The Landlord and J.B. further testified that the rental unit is closer to their home and made it easier for them to make attend on their parents.

According to the Landlord, it became apparent that caring for J.B.'s father was beyond the ability of J.B.'s mother and that the father's health deteriorated rapidly. The Landlord's evidence includes health records dated November 23, 2021, which are largely redacted. Neither the Landlord nor J.B. provided submissions on the circumstances leading to their inclusion of the redacted health records put into evidence.

I am told by the Landlord and J.B. that the parents never moved into the rental unit and moved into an assisted care facility in June 2022. A copy of the tenancy agreement for J.B.'s parents signed on May 6, 2022 was put into evidence by the Landlord. Information pertaining to monthly rent under their tenancy agreement was redacted from the copy put into evidence. However, J.B. advised that his parents are paying combined rent of approximately \$16,000.00 per month at the assisted care facility.

The Landlord admits that the rental unit was listed for sale in January 2022 and its sale closed in early March 2022.

The Landlord argues that it had been their intention to move her father-in-law and mother-in-law into the rental unit and that the deterioration of the father-in-law's health was an extenuating circumstance that prevented them from following through with their plan.

I asked the Landlord and J.B. when they had made the application for assisted living facilities for J.B.'s parents. J.B. advised that his parents applied for assisted living facilities through a public provider approximately one year ago and they have been on a waitlist since applying. I asked when the parents applied for their current private facilities. Neither the Landlord nor J.B. provided a clear answer on when they applied, though confirm the private assisted living accommodation was secured in May 2022.

The Tenants argue that the Landlord acted in bad faith when the Two-Month Notice was issued. They advised that there was significant water leak in the rental unit following heavy rain in mid-October 2021. The Tenants further testify that two restoration companies attended the rental unit at the Landlord's request, both of whom advised the Tenants that they'd likely have to vacate the rental unit to have it repaired.

The Tenants testified to being in communication with the Landlord about repairing the rental unit in the month that followed the water leak. They say that they asked the Landlord if they needed to pack their belongings to facilitate the repairs and were told not to do so and that the Landlord would be in touch in a week. They testify that they received the Two-Month Notice afterwards.

The Tenants testified that the Landlord did not attend the rental unit when the water came into the rental unit.

The Landlord and J.B. testified that the water leak originated from the common property and that they may not have attended the rental unit but that they were in communication with the strata about the issue. J.B. drew into question the recommendations of the restoration companies, arguing that prior experience has led him to believe that they tend to overstate issues on their assessment. The Landlord argued that the water damage was minor and that repairs involved painting and sanding the floors. I was advised that the structure is concreted.

The Tenants re-emphasized that this was a significant leak. The Tenant D.D. says he is a journeyman carpenter and says that the interior walls had drywall. He emphasized that moisture readings from the restoration company indicated the drywall was wet.

Further submissions were made by the Landlord that the rental unit is on the ground floor and that this would have been ideal for her father-in-law. The Tenants emphasized that the rental unit has steps within the rental unit and that there are steps from the street to enter the residential property.

### Analysis

The Tenants seek compensation equivalent to 12 times monthly rent.

Pursuant to s. 51(2) of the *Act*, a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement when a notice to end tenancy has been issued under s. 49 and the landlord or the purchaser who asked the landlord to issue the notice, as applicable under the circumstances, does not establish:

- that the purpose stated within the notice was accomplished in a reasonable time after the effective date of the notice; and
- has been used for the stated purpose for at least 6 months.

Pursuant to s. 52(3) of the *Act*, a landlord may be excused of a compensation claim under s. 51(2) if there are extenuating circumstances which prevent the landlord from carrying out the stated purpose set out under the notice issued under s. 49.

Policy Guideline #50 provides the following guidance with respect to what may be considered “extenuating circumstances”:

### **E. EXTENUATING CIRCUMSTANCES**

An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner’s control. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal, but did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations and cannot complete them because they run out of funds.

(Emphasis Added)

The Landlord argues that her father-in-law's health deteriorated significantly after the Two-Month Notice was issued such that it was no longer feasible for his wife to look after him.

I place significant of the following sequence of events, all of which were not in dispute between the parties:

- Sometime in mid to early 2021 – The parents are placed on a waitlist for assisted living at a public facility.
- October 2021 – The parents sell their home and move in with the Landlord and J.B..
- November 15, 2021 – The Two-Month Notice is issued. The effective date of the Two-Month Notice is January 31, 2022.
- December 13, 2021 – The Tenants vacate the rental unit.
- January 2022 – The property was listed for sale.
- March 2022 – The property was transferred to the buyer.
- May 2022 – The parents sign a tenancy agreement with the assisted care facility.
- June 2022 – The parents move into their current assisted care facility.

The issue here is that Policy Guideline #50 is clear that extenuating circumstances are those that cannot be anticipated or are outside a reasonable owner's control which prevent the stated purpose in the notice from being fulfilled. The circumstances

provided as examples include the death of a would-be occupant or the destruction of the rental unit due to forces of nature.

Here, the father-in-law's health issues were known to the Landlord and J.B. prior to the Two-Month Notice being issued. It was admitted that the parents had applied for assisted living facilities approximately a year ago and placed on a waitlist. This was before the Two-Month Notice was served on the Tenants. Given this, it was clearly anticipated prior to the Two-Month Notice being issued that the father-in-law's health was deteriorating to the point that his wife could no longer care for him adequately on her own.

The Landlord's evidence includes health records that are redacted from November 23, 2021. The Landlord provided no submissions on the nature of the records, nor can I determine why they were included in evidence as the information has been redacted. What can be gleaned is that an individual, presumably the father-in-law, was admitted to hospital for emergency reasons. What those reasons were are unknown to me. Perhaps this date served as a triggering event for the change in the Landlord's thinking. I do not know as no submissions were made on this point.

The Landlord's written submissions include a summary saying that throughout November and December 2021 the father-in-law's health deteriorated such that the mother-in-law was no longer able to provide the required level of care and that the family decided to sell the rental unit to help find long-term care. In other words, contemporaneous to the decision on issuing the Two-Month Notice, which was signed and served on November 15, 2021, the Landlord was already contemplating the sale of the property.

The timeframe involved draws into question whether the intention was for the parents to ever move into the rental unit to begin with. The Landlord admits the parents never moved-in and admits to listing the property for sale in January 2022. Not only was this one month after the Tenants vacated the rental unit, but it was also before the effective date of January 31, 2022 as set out in the Two-Month Notice. In other words, the Landlord listed the property for sale almost immediately after the Tenants vacated and it was on the market before the planned end for the tenancy as per the Two-Month Notice. This all corresponds with the near contemporaneous decision to both issue the Two-Month Notice and list the property for sale.

I find that the Landlord's father-in-law and mother-in-law never occupied the rental unit as per the Two-Month Notice, which is admitted by the Landlord. I further find that Landlord has failed to show that extenuating circumstances are present. Clearly the Landlord anticipated that the mother-in-law was no longer capable of looking after the father-in-law based on the admitted fact that the parents were placed on a waitlist for assisted living. This occurred prior to the Two-Month Notice being served on the Tenants.

Accordingly, I find that the Tenants are entitled compensation under s. 51(2) of the *Act* in the amount of \$13,776.00 (\$1,148.00 x 12).

### Conclusion

The Landlord admits that the purpose set out in the Two-Month Notice was never fulfilled. I find that there are no extenuating circumstances present justifying the application of s. 51(3) of the *Act*.

I find that the Tenants are entitled to compensation under s. 51(2) of the *Act*. I order that the Landlord pay **\$13,776.00** (\$1,148.00 x 12) to the Tenants.

It is the Tenants obligation to serve the monetary order on the Landlord. If the Landlord does not comply with the monetary order, it may be filed by the Tenants with 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 03, 2022

---

Residential Tenancy Branch