



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC, FFT

### Introduction

The Applicants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- a monetary order for compensation pursuant to s. 51 equivalent to 12 times the monthly rent payable under the tenancy agreement; and
- return of their filing fee pursuant to s. 72.

A.R. and M.W. appeared as the Applicants. R.Z. appeared as the Respondent.

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 Applicants entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement?
- 2) Are the Applicants entitled to the return of their filing fee?

### 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 Applicants confirmed the following details with respect to their tenancy:

- The took occupancy of the rental unit on August 1, 2021.
- The vacated the rental unit on May 30, 2022.
- Rent of \$1,200.00 was due on the first day of each month.

The subject rental unit is a basement suite within a single detached home.

The Tenant's evidence includes a copy of a Two-Month Notice to End Tenancy signed on March 31, 2022 (the "Two-Month Notice"). The Two-Month Notice indicates that the notice was issued on the basis that sale conditions were satisfied and the purchaser asked the landlord, in writing, to issue the notice as the purchaser or their close family member intended in good faith to occupy the rental unit.

The Respondent confirmed that he purchased the property, with the sale conditions met at the end of March 2022. The Respondent testified that he obtained possession of the property on June 1, 2022. A copy of the purchase contract was put into evidence by the Respondent, which indicates it was signed on March 20, 2022 and the possession date was May 31, 2022.

The Respondent emphasized that he asked the seller, the Applicants' Landlord, that the rental unit be left vacant. However, the Respondent denies providing written notice that this be done. The Respondent further indicates that the seller had advised that she had issues with the Applicants as tenants.

The Respondent advised that it was the intention of his mother-in-law and father-in-law to occupy the rental unit. The Respondent says that his in-laws live in another country and that they were to move into the rental unit for approximately 1 year beginning in early June 2022 but that this did not take place because his mother-in-law was diagnosed with cancer in mid-May 2022.

The Respondent confirmed that his in-laws are not Canadian citizens and would not have their healthcare costs covered in Canada. The Respondent's evidence includes

documents confirming the cancer diagnosis. Copies of the in-laws' passports were also put into evidence showing that they have multiple entry visitor visas with Canada that expire in 2027.

The Respondent indicates that due to his mother-in-law's cancer diagnosis, she began treatments in her home country. The Respondent confirms that he has re-rented the rental unit on July 1, 2022.

The Applicants emphasized that there was no proof that the Respondent purchased tickets for his in-laws to come to Canada, though it was admitted that the Respondent's mother-in-law appears to have cancer.

The Respondent emphasized that no tickets were purchased as he was uncertain on the condition on move-in and wanted to have some time to settle before the tickets were purchased. The Respondent testified that once the diagnosis was clear, he had to make childcare arrangements for his children, who were to be cared for in part by his in-laws, and needed to cover his mortgage, which is why the unit was re-rented.

### Analysis

The Applicants seek compensation equivalent to 12 times the monthly rent payable under the tenancy agreement.

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.

The Respondent argued he did not give written notice to the seller to issue the Two-Month Notice. I place no weight in this argument as the Respondent also confirmed that he asked the seller in his discussions with her that he wanted vacant possession.

The Respondent admits that his in-laws did not occupy the rental unit, however, he argued that that was not possible due to his mother-in-law's cancer diagnosis.

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

The Respondent's evidence is clear and compelling that the mother-in-law has been diagnosed with cancer and is undergoing treatments in her home country. There is a note from her physician dated May 20, 2022 in which the mother-in-law is referred for additional screening. Subsequent tests appear to have been undertaken on June 17, 2022.

The evidence on file demonstrates that the diagnosis occurred between the Two-Month Notice being issued and the Respondent taking possession of the property. It is reasonable, in my view, for the Respondent's mother-in-law to undertake treatments in her home country as she does not have medical coverage in Canada.

I find that the Respondent has established that there are extenuating circumstances, namely his mother-in-law's cancer diagnosis, which prevented his in-laws from occupying the rental unit.

I have considered the Respondent's submissions that he was concerned about the Applicants as tenants based on his conversation with the seller. This admission may be relevant if the purchaser's good faith was being analysed in the context of a dispute regarding the validity of the Two-Month Notice under s. 49. However, that is not the application before me. The question of good faith is not relevant under s. 51(2) of the *Act*. It is a factual question: did the close family member move in within a reasonable period and did they occupy the space for at least 6 months. If not, can the purchaser demonstrate extenuating circumstances. As stated above, I find that the Respondent has shown extenuating circumstances are present. There is no reason to doubt the veracity of any of the evidence presented to me at the hearing regarding the mother-in-law's diagnosis. Indeed, the Applicant's admit that it does appear the mother-in-law has been diagnosed with cancer.

Accordingly, I find that the Tenants are not entitled to compensation under s. 51(2) of the *Act*. Their application is dismissed.

Conclusion

The Applicants' claim under s. 51(2) of the *Act* is dismissed without leave to reapply.

As the Applicants were not successful in their application, I find that they are not entitled to the return of their filing fee. Their claim for the filing fee's return under s. 72(1) of the *Act* 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: September 01, 2022

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Residential Tenancy Branch