



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing dealt with the Tenants' application under the Residential Tenancy Act (the "Act") for:

- compensation due to the Landlords having ended the tenancy and not complied with the Act or used the rental unit for the stated purpose pursuant to section 51; and
- authorization to recover the filing fee for this application from the Landlords pursuant to section 72.

The Landlords and the Tenants attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The Landlords were represented by their legal counsel, TB. During the hearing, the Landlords called their realtor, GSD, to testify as a witness.

All attendees at the hearing were advised that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

### Preliminary Matter – Service of Dispute Resolution Documents

The Landlords acknowledged receipt of the notice of dispute resolution proceeding packages and the Tenants' evidence sent via registered mail (collectively, the "NDRP Packages"). I find the Landlords were served with the NDRP Packages in accordance with sections 88 and 89 of the Act.

The Tenants acknowledged receipt of the Landlords' evidence for this hearing. I find the Tenants were served with the Tenant's evidence in accordance with section 88 of the Act.

### Issues to be Decided

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

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on May 1, 2021 and ended on December 1, 2021. Rent was \$2,050.00 per month. Copies of the tenancy agreement have been submitted into evidence.

The parties also submitted copies of a two month notice to end tenancy dated November 1, 2021 (the “Two Month Notice”) into evidence. The Two Month Notice is signed by one of the Landlords, TSG, and has an effective date of December 31, 2021. It states that the rental unit will be occupied by “the landlord or the landlord’s spouse”.

Counsel for the Landlords, TB, submitted that the Landlords had ended the tenancy with good faith and no ulterior motives. TB submitted that the Landlords had wanted to occupy the rental unit for their own use because they had sold their primary residence. TB explained that the Landlords had listed their primary residence for sale in July 2021, and there was a fully executed contract of purchase and sale dated October 27, 2021.

TB stated the Landlords then served the Two Month Notice as requested by the Tenants on November 1, 2021. TB explained that on November 17, 2021, the Landlords received a message from the Tenants stating that they would like to vacate early by December 1, 2021, which the Landlords agreed to.

TB stated that the buyers for the Landlords backed out of the purchase of the Landlords’ primary residence. TB acknowledged that the buyers did not remove subjects. TB emphasized that the Landlords had a fully executed agreement and that the Landlords’ good faith intention was to move into the rental unit when they issued the Two Month Notice. TB argued it was not the Landlords’ fault that the contract of purchase and sale was never fully performed.

TB submitted that the Tenants were informed via telephone on December 5, 2021 that the Landlords' plans to sell their primary residence had not worked out. TB explained that the Landlords offered the Tenants to return to the rental unit. TB stated that the Tenants told the Landlords they had already packed their belongings and did not want to return to the rental unit.

TB stated that the Landlords then advertised the rental unit for rent on December 6, 2021. TB stated the Landlords noticed that the market rate had increased, so they listed the rental unit at a higher rate.

TB argued that the Landlords were acting in good faith at all material times and when ending the tenancy. TB confirmed the Landlords never sold their primary residence as the market was not good.

The Landlords confirmed TB's submissions during the hearing. The Landlords also submitted documentary evidence including:

- Contract of purchase and sale dated October 10, 2021 (the "First CPS")
- Contract of purchase and sale dated October 26, 2021 (the "Second CPS")
- Text message correspondence with the Tenants
- Facebook marketplace listing and messages
- Letter from Tenants dated November 19, 2021
- Signed written statement of TSG dated May 30, 2022
- Signed written statement of GSD dated August 9, 2022

In his written statement, TSG explained that he informed the Tenants of the Landlords' plans to move back into the rental unit on October 16, 2021, and the Tenants asked him to issue the Two Month Notice on November 1, 2021.

TSG stated the Landlords received an offer on their primary residence on October 27, 2021 and issued the Two Month Notice on November 1, 2021. TSG stated the Tenants informed him that they wanted to vacate by December 1, 2021. TSG stated the Landlords' contract with their realtor ended on October 31, 2021, but the Landlords still had plans to sell the property privately. TSG explained the Landlords had "received a few offers but overall decided to wait until the start of December 2021 for an offer that matched [the Landlords'] expectations." TSG further stated as follows:

*Unfortunately, we could not agree on the price that the buyers were willing to offer and came to a decision as a family that we would wait until we received an offer that was within our expectations or until the market got better.*

TSG stated he called the Tenants on December 5, 2021 and offered the Tenants to come back for the same monthly rent, but the Tenants refused. TSG emphasized that the Tenants did not find out about the Landlords' new renters online or when the Tenants came to retrieve mail, since TSG had called the Tenants to ask them to come back. TSG stated that the rental unit was listed on December 6, 2021 as the Landlords could not afford to keep it vacant.

During the hearing, the Landlords called their realtor, GSD, to testify as a witness. GSD confirmed that the Landlords received offers to purchase their primary residence. GSD confirmed that there was an offer accepted by the Landlords, but the buyers did not remove subjects due to an issue related to financing. GSD testified that the subject removal date was October 27, 2021. GSD testified that there was another deal that had collapsed as the buyers did not remove subjects. GSD confirmed that he informed the Landlords when he did not receive subject removals from the buyers on the subject removal dates.

In response, one of the Tenants, KS, testified that when the Landlords contacted the Tenants on December 5, 2021, the Tenants had already signed a lease for a new home and had incurred moving expenses. KS testified that it was not possible for the Tenants to return to the rental unit by that point. KS stated that the Tenants might have been able to work out something with the Landlords if the Landlords had talked to the Tenants on October 27, 2021, after their deal collapsed, or even just after issuing the Two Month Notice, but the Landlords did not do so and instead re-listed the rental unit for more rent.

The Tenants stated that the Landlords' timeline does not make sense, and that the offer for the Landlords' primary residence fell through before the Tenants vacated the rental unit. The Tenants argued that the Landlords are not residing at the rental unit and that the Landlords could still have resided in the rental unit.

The Tenants submitted screenshots of the ad for the rental unit posted online.

In reply, TB argued that the Landlords truly believed their primary residence would sell and that they would move into the rental unit. TB argued the Landlords reaching out to

the Tenants before re-listing the rental unit shows that the Landlords were acting in good faith. TB submitted that the Landlords did not move into the rental unit because their primary residence had not sold and the Landlords were still living in that residence. TB argued it did not make sense for the Landlords to move into the rental unit by that point since the Landlords would be incurring extra moving expenses and uprooting their family.

### Analysis

#### *1. Are the Tenants entitled to compensation under section 51(2) of the Act?*

Section 49(3) of the Act permits a landlord who is an individual to end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 49(1) defines an individual's "close family member" to include the individual's parent, spouse, or child, or the parent or child of that individual's spouse.

In this case, I have reviewed a copy of the Two Month Notice and find that it is a valid notice to end tenancy in form and content pursuant to section 52 of the Act.

I find the parties' tenancy was ended on December 1, 2021 under the Two Month Notice and in accordance with section 49(3) of the Act.

I note that although the Two Month Notice stated an effective date of December 31, 2021, I find the Tenants gave written notice to the Landlords on November 19, 2021 to end the tenancy early on December 1, 2021, in accordance with section 50 of the Act. Section 50(1) states that if a tenant receives a notice to end tenancy under section 49, the tenant may end the tenancy early by giving the landlord at least 10 days' written notice and paying the landlord the proportion of the rent due to the effective date of the tenant's notice. Section 50(3) of the Act further states that a tenant's notice under section 50 does not affect the Tenant's right to compensation under section 51 of the Act.

Moreover, I note that I do not find the Landlords' attempt to have the Tenants return to the rental unit on December 5, 2021 to have any impact on the validity of the Two Month Notice or the Tenants' written notice dated November 19, 2021.

Residential Tenancy Policy Guideline 11. Amendment and Withdrawal of a Notice to End Tenancy states as follows:

**C. WITHDRAWAL OF NOTICE TO END TENANCY**

A landlord or tenant cannot unilaterally withdraw a notice to end tenancy.

A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given.

A notice to end tenancy can be waived only with the express or implied consent of the landlord or tenant (see section D below).

It is recommended that withdrawal of a notice to end tenancy be documented in writing and signed by both the landlord and the tenant.

I find that as the tenancy had already ended on December 1, 2021, it was too late for the Landlords to try to reinstate the tenancy on December 5, 2021. I also find that it was reasonable for the Tenants to refuse to return to the rental unit by that point. I accept the Tenants' testimony that they had already signed a new lease and had incurred moving expenses.

Based on the foregoing, I am satisfied that the tenancy ended on December 1, 2021 pursuant to sections 49(3) and 50 of the Act.

In this application, the Tenants seek compensation of 12 months' rent from the Landlords under section 51(2) of the Act, which states:

**Tenant's compensation: section 49 notice**

51 [...]

(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.

Policy Guideline 50. Compensation for Ending a Tenancy (“Policy Guideline 50”) states:

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f) for at least six months. If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

On this application, I find that much of the Landlords’ submissions focused on the Landlords’ good faith intentions to move into the rental unit at the time that the Two Month Notice was issued. In my view, while a landlord’s good faith intentions would be a relevant factor on a tenant’s application to dispute a notice to end tenancy for landlord’s use under section 49(3) of the Act, it is not a relevant factor on a tenant’s application for compensation under section 51(2) of the Act. As stated above, section 51(2) requires a landlord to prove that they accomplished the purpose for ending the tenancy and has used the rental unit for that purpose for at least 6 months, beginning within a reasonable period after the effective date of the notice.

I find the stated purpose for ending the tenancy under the Two Month Notice was for the Landlords or their spouse(s) to occupy the rental unit. I find it is undisputed that neither the Landlords nor their spouse(s) moved into the rental unit at any time after the Two Month Notice was issued. I find that the rental unit was vacant in December 2021 after the Tenants moved out, and has been rented to new tenants since in or around January 2022. I find the Landlords and their family members continued residing in their primary residence.

Based on the foregoing, I conclude that the Landlords did not accomplish the stated purpose of the Two Month Notice within a reasonable time after issuing the Two Month Notice as required under section 51(2) of the Act.

Where a landlord has not met the requirements of section 51(2), section 51(3) allows the landlord to be excused from paying compensation to the tenant if there were “extenuating circumstances” that “prevented” the landlord from accomplishing the stated purpose of the notice, as follows:

(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.

Policy Guideline 50 further states as follows:

### **G. EXTENUATING CIRCUMSTANCES**

The director may excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending a tenancy within a reasonable period after the tenancy ended, from using the rental unit for the stated purpose for at least 6 months, or from complying with the right of first refusal requirement.

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.
- A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.

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 the renovations and cannot complete them because they run out of funds.
- A landlord entered into a fixed term tenancy agreement before section 51.1 came into force and they never intended, in good faith, to occupy the rental unit because they did not believe there would be financial consequences for doing so.

In this case, I am not satisfied that the Landlords have established that there were extenuating circumstances which prevented them or their spouse(s) from moving into the rental unit.

I note I am unable to find evidence to suggest that the Landlords (and the third owner of their primary residence) had entered into a binding contract of purchase and sale to sell the primary residence.

Based on GSD's written statement and testimony, I find the buyers of the First CPS did not waive or remove the buyers' conditions precedent listed in clause 3 of the First CPS. Clause 3 contains the standard language in real estate contracts which states that "Each condition, if so indicated is for the sole benefit of the party indicated. Unless each condition is waived or declared fulfilled by written notice given by the benefiting party to the other party on or before the date specified for each condition, this Contract will be terminated thereupon and the Deposit returnable in accordance with the *Real Estate Services Act*" (emphasis added). As such, I find the First CPS was terminated when the buyers did not waive or remove their conditions by the subject removal date of October 14, 2021.

I find the Second CPS submitted into evidence is signed by the prospective buyers only, and unless there was acceptance by the sellers, the Second CPS would only be an offer to purchase.

I find the Landlords ultimately did not sell their primary residence and continued residing there with their family. I find the reason given by the Landlords for not selling their primary residence was that they could not agree on the price that the buyers were willing to offer and decided to wait for a better offer or for the market to get better. I find that this situation does not constitute extenuating circumstances which prevented the Landlords or their spouse(s) from moving into the rental unit.

I find the Landlords or their spouse(s) could still have moved into the rental unit after the Tenants left, but chose not to do so. I accept there may have been logical reasons for this decision, such as a desire to avoid moving costs and inconvenience. However, in my view, the fact that the Landlords' primary residence had not sold as planned does not mean the Landlords were no longer legally obligated to accomplish the stated purpose of the Two Month Notice. I find reasons such as moving expenses and the inconvenience of uprooting the Landlords' family to not constitute extenuating circumstances for the purpose of section 51(3) of the Act.

Accordingly, I find the Landlords have not accomplished the stated purpose of the Two Month Notice and have not established that there were extenuating circumstances preventing the Landlords from doing so.

I conclude that pursuant to section 51(2) of the Act, the Tenants are entitled to compensation of 12 months' rent from the Landlords, in the amount of  $\$2,050.00 \times 12$  months =  $\$24,600.00$ .

*2. Are the Tenants entitled to recover the filing fee?*

The Tenants have been successful in this application. I grant the Tenants' claim for recovery of the \$100.00 filing fee under section 72(1) of the Act.

The total Monetary Order granted to the Tenants on this application is calculated as follows:

Item	Amount
Section 51(2) Compensation ( $\$2,050.00 \times 12$ months)	\$24,600.00
Filing Fee	\$100.00
<b>Total Monetary Order for Tenants</b>	<b>\$24,700.00</b>

Conclusion

Pursuant to sections 51(2) and 72(1) of the Act, I grant the Tenants a Monetary Order in the amount of **\$24,700.00**. This Order may be served on the Landlords, 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: October 13, 2022

---

Residential Tenancy Branch