



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on October 31, 2022. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51

The Landlords and the Tenants both attended the hearing and provided affirmed testimony. The Landlords confirmed receipt of the Tenants' Notice of Dispute Resolution Proceeding and evidence package, and did not submit any evidence of their own.

All parties were provided the 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Are the Tenants entitled to compensation for money owed or damage or loss under section 51 of the *Act*?

### Background and Evidence

The Tenants provided a copy of the tenancy agreement into evidence which shows that monthly rent was set at \$1,550.00. The Tenants stated that they received a 2 Month Notice to End Tenancy for Landlord's Use (the Notice) around August 30, 2021, and were told by their current Landlord that the house had sold, and the new buyers had requested vacant possession, for their own use.

The following ground was selected on the Notice:

*All of the conditions for the 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.*

The Landlords named on this application were the ones listed on page 2 of the Notice as the Purchasers. The Tenants stated that when they were picking up their mail, after they moved out, they noticed that there was mail for other people, that were not the Landlord, and they got suspicious. The Tenants stated that they contacted the person whose mail it was, via Facebook, and she confirmed she was not the Landlord and had moved in as of January 1, 2022.

The Landlords acknowledged that they never moved in, and that they re-rented it to this other person. The Landlords stated that they had issues with their financing, at the time of purchase, and as a result, they had to involve their cousins as part owners. The Landlords stated that their cousins insisted that it would complicate matters if the Landlords moved in, so they opted to rent out the unit, rather than live in it as initially planned.

### Analysis

With respect to the Tenant's request to obtain 12 months' worth of rent as compensation based on the Notice, pursuant to section 51 of the Act, I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

**ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENVOATIONS AND REPAIRS**

*A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:*

- *accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or*
- *used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).*

*A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:*

- *accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.*

*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). 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.*

*Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.*

As noted above, the onus is on the Landlords to demonstrate that they accomplished the stated purpose for ending the tenancy, as laid out on the Notice or that they have an extenuating circumstance. The Landlord selected the following ground:

- The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).
  - The child of the Landlord or Landlord's spouse

I turn to the following portion of the Act:

***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***

- (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.*

*(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 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.*

In this case, I note the onus is on the Landlords to prove that they accomplished the stated purpose on the Notice, which is that they, or close family, would be moving into the property. The Landlords acknowledge that this did not occur. As such, I am satisfied they are in breach of section 51(2) of the Act. Given this breach occurred, the issue now becomes whether or not the Landlords have sufficiently demonstrated that there were extenuating circumstances which prevented them from following through with the grounds selected on the Notice.

***Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy states as follows:***

*An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:*

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before 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 didn't notify the landlord of any further change of address or contact information after they moved out.*

*The following are probably not extenuating circumstances:*

- *A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- *A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations*

The Landlords did not directly state that they had extenuating circumstances. However, they generally referred to the fact that they had issues with financing when they were purchasing the property, which led them to involve their cousins in the ownership structure. It appears this shift led to the Landlords' cousins suggesting that the Landlords not move in, which in turn led to the decision to re-rent as of January 1, 2022. I acknowledge all of this. However, I am not satisfied that the circumstances are sufficiently extenuating, such that they ought to be excused from paying compensation for this matter. It is unclear why the Landlords would be unable to move in, even if their cousins were now involved in the financing of the purchase. Ultimately, I am not satisfied that it would be unreasonable or unjust for the Landlords to pay the compensation.

I award the Tenant \$18,600.00, pursuant to section 51(2) of the Act, which is 12 times rent of \$1,550.00. I decline to award mailing costs.

### Conclusion

I grant the Tenants a monetary order in the amount of \$18,600.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: November 2, 2022

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Residential Tenancy Branch