



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Former Tenants under the Residential Tenancy Act (the Act) on February 26, 2022, seeking:

- Compensation from the Purchaser of the rental unit under section 51(2) of the Act; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. on November 20, 2022, and was attended by the Former Tenants and their witness R.Y. (the Witness). All testimony provided was affirmed. The Purchaser did not attend. The Former Tenants and the Witness were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The participants were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The participants were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The participants were also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Purchaser did not attend the hearing, I confirmed service of these documents as explained below. The Former Tenants provided affirmed testimony in the hearing that the Notice of Dispute Resolution Proceeding (NODRP) package, which includes the Application and the Notice of Hearing, as well as the evidence package were sent to the Purchaser on March 10,

2022, by registered mail at the rental unit address, as their tenancy ended by way of a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) because the Purchaser or their close family member(s) was/were intending to occupy the rental unit. The Former Tenants provided me with the registered mail tracking number which I have recorded on the cover page of this decision, as well as the registered mail receipt, a delivery progress report for the registered mail, and photographs of the registered mail envelope and documents. The Former Tenants stated that the registered mail was ultimately returned to them as it was not picked up by the Purchaser.

The Former Tenants stated that once the registered mail was returned, they attempted to serve the Purchaser in-person at the rental unit, but discovered upon their attendance that their former rental unit was now tenanted by short-term Airbnb guests. The Former Tenants stated that they then conducted a property search to determine if the Purchaser still owned the address listed as their residence on the Two Month Notice, and discovered that they did. As a result, the Former Tenants stated that they sent a registered mail package to this address including the NODRP, all previous documents and evidence included in the original registered mail package, plus evidence that the rental unit was being rented on Airbnb, as well as a copy of the original registered mail tracking information. The Former Tenants also provided me with the registered mail tracking number for this registered mail package, which I have noted on the cover page of this decision, as well as a delivery progress report for this registered mail, a title search for the address used, the registered mail receipt, and photographs of the registered mail envelope and documents.

Finally, the Former Tenants stated that they know that the Purchaser still frequents the former rental unit, as their children still attend school in the area and they saw the Purchaser on the property of the former rental unit as recently as September 26, 2022, when picking their children up from school. The Former Tenants stated that they advised the Purchaser at that time that there was registered mail available for them awaiting pick-up, and that there was a hearing scheduled, to which the Purchaser stated that they would pick-up the registered mail and attend the hearing. However, the Former Tenants stated that the second registered mail package was also returned to sender as unclaimed, despite the above noted conversation with the Purchaser.

The Former Tenants stated that the tenancy ended as a result of a Two Month Notice, and I note that the Two Month Notice in the documentary evidence before me has an effective date of December 23, 2022. Further to this, I note that the Two Month Notice

states that it was issued because the property was sold to the Purchaser and the Purchaser or their close family member indicated to the previous landlord/owner that it should be served on the Former Tenants because they or their close family members intended in good faith to occupy the rental unit. As I am satisfied that the first registered mail package was sent to the former rental unit within 6 months after the effective date of the Two Month Notice, and the Purchaser or their close family members were supposed to be residing in the rental unit for at least 6 months duration after that date, as per the requirements of the Act and Two Month Notice, I therefore find that this address constituted a proper address for service for the Purchaser when the registered mail was sent. I therefore deem the registered mail received 5 days later, on March 15, 2022, pursuant to section 90(a) of the Act, even though it was not picked up by the Purchaser.

Further to this, I am satisfied that the Former Tenants also made additional attempts to serve the Purchaser with the above noted documents and additional documentary evidence and that the Purchaser was aware that registered mail was sent to them and awaiting pick-up and that a hearing was scheduled for October 20, 2022, based on the documentary evidence before me and the affirmed testimony of the Former Tenants regarding a conversation had with the Purchaser on September 26, 2022. As a result, I also deem the registered mail sent to the Purchaser on September 15, 2022, served 5 days later on September 20, 2022, pursuant to section 90(a) of the Act, and find that the Purchaser was clearly avoiding service at the rental unit, and an address I am satisfied is where they reside, based on the Two Month Notice and the fact that they never occupied the rental unit, and the fact that the Former Tenants advised them registered mail was available and that a hearing was occurring, yet they never retrieved the registered mail from the post office or contacted the Residential Tenancy Branch (Branch) for any information regarding the hearing. As a result, I find that the documentary evidence before me from the Former Tenants was served on the Purchaser as required and I accept it for consideration.

Branch records indicate that the NODRP package was emailed to the Former Tenants on March 8, 2022, for service by the Former Tenants on the Purchaser by March 11, 2022. As I am satisfied that the NODRP was sent to a valid address for service for the Purchaser on March 1, 2022, as set out above, I find that the Former Tenants therefore complied with section 59(3) and rules 3.1 of the Rules of Procedure.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. I verified that

the hearing information contained in the NODRP was correct, and I note that the Former Tenants and the Witness had no difficulty attending the hearing on time using this information. As the Former Tenants, the Witness and I attended the hearing on time and ready to proceed, and I was satisfied as set out above that the Purchaser was deemed served with the NODRP for the purpose of the Act on March 15, 2022, and subsequently on September 20, 2022, I therefore commenced the hearing as scheduled at 1:30 P.M. on October 20, 2022, despite the absence of the Purchaser or an agent acting on their behalf, pursuant to rule 7.3 of the Rules of Procedure. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party. Although the teleconference remained open for the 26-minute duration of the hearing, no one attended the hearing on behalf of the Purchaser.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Rules of Procedure, unless stated otherwise in this decision, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Former Tenants, a copy of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

#### Issue(s) to be Decided

Are the Former Tenants entitled to compensation under section 51(2) of the Act?

Are the Former Tenants entitled to recovery of the filing fee under section 72 of the Act?

#### Background and Evidence

Although a written tenancy agreement was not submitted for my consideration, the Former Tenants stated that a tenancy to which the Act applies existed and submitted a Notice of Rent Increase form indicating that their rent was increased from \$3,300.00 to \$3,385.80, effective March 1, 2020.

The Former Tenants stated that they were served with the Two Month Notice and that the tenancy ended on February 3, 2021, as a result of the Two Month Notice after they exercised their right to end the tenancy early pursuant to section 50 of the Act. The Two Month Notice in the documentary evidence before me is on the Branch form, is signed

and dated December 23, 2020, contains the address of the rental unit, has an effective date of February 28, 2021, and states that the notice has been served because 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 of that person, intends in good faith to occupy the rental unit. The person named as the respondent in the Application, and referred to as the Purchaser in this decision, is named as the purchaser on page 4 of the Two Month Notice. A copy of the written notice from the Purchaser to the seller requesting that the Two Month Notice be served because they or their close family member(s) intended in good faith to occupy the rental unit was also submitted by the Former Tenants for my review and consideration.

The Former Tenants stated that after they complied with the Two Month Notice and vacated the rental unit, they kept in touch with their previous neighbor R.Y. who advised them that no one moved into the rental unit and that it was being renovated. R.Y. submitted a written statement to that affect, and appeared at the hearing to provide affirmed testimony. At the hearing R.Y. stated that they live approximately 400 meters from the rental unit and so they drive or walk by it every day. R.Y. stated that after the Former Tenants vacated, they would knock on the door of the rental unit a few times a week and there was never any answer or any indication that anyone was living there. R.Y. stated that around the end of April 2021, renovations began at the rental unit and that they spoke with the workers, who stated that they were friends of the Purchaser. R.Y. stated that near the end of August 2021, they began seeing cars in the driveway.

The Former Tenants submitted photographs of what appear to be ongoing renovations, as well as copies of Airbnb advertisements and reviews for the property where the Purchaser is named as the host. The reviews date back as far as October of 2021. The Former Tenants stated that although the Purchaser has now deleted the Airbnb listing, they have a new VRBO profile, which just shows their intention for short-term rentals.

The Former Tenants sought \$40,729.60 in compensation pursuant to sections 51(2) and 72 of the Act, \$40,629.60 (12 x \$3,385.80) in compensation as they state the Purchaser failed to comply with the stated purpose for ending the tenancy set out in the Two Month Notice within a reasonable period of time after the effective date of the Two Month Notice and to use it for the stated purpose for at least six months duration thereafter, and \$100.00 for recovery of the filing fee.

### Analysis

Based on the documentary evidence and affirmed testimony before me, I am satisfied that a tenancy to which the Act applies existed between the parties. I am also satisfied that the Former Tenants were served with a Two Month Notice pursuant to section 49(3) of the Act, and that the tenancy ended as a result of the Two Month Notice on February 3, 2021.

Section 51(2) of the Act states that 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:

- the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- 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.

I accept the undisputed documentary evidence and affirm testimony before me for consideration from the Former Tenants and the Witness that neither the Purchaser nor their close family member(s) moved into and occupied the rental unit as required by the Two Month Notice, and that the rental unit was left vacant for several months before it was renovated and used as an Airbnb rental. Further to this, I note that neither the Purchaser nor an agent acting on their behalf, appeared at the hearing to make any arguments or present any evidence for my consideration, despite the fact that the Purchaser bore the burden of proof in this matter with regards to satisfying me on a balance of probabilities that they used the rental unit for the stated purpose set out in the Two Month Notice within a reasonable period of time after the effective date of the notice, and for at least six months duration thereafter, or that extenuated circumstances prevented them from doing so. As no one appeared on behalf of the Purchaser to argue that extenuating circumstances prevented them from either accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or using the rental unit for that stated purpose for at least six months duration, beginning within a reasonable period after the effective date of the notice, I therefore find that section 51(3) of the Act does not apply.

Pursuant to section 51(2) of the Act, I therefore grant the Former Tenants' Application and I find that the Former Tenants are entitled to monetary compensation in the amount of \$40,629.60, which represents an amount that is equivalent of 12 times the monthly rent I am satisfied was payable under the tenancy agreement at the time the tenancy ended (\$3,385.80). As the Former Tenants were successful in their Application, I also award them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act, I therefore grant the Former Tenants a Monetary Order in the amount of \$40,729.60 and I order the Purchaser to pay this amount to the Former Tenants.

Pursuant to Residential Tenancy Policy Guideline (Policy Guideline) #27, section B, subsection 2, I find that the \$40,629.60 awarded pursuant to section 51(2) of the Act is exempt from the \$35,000.00 monetary jurisdiction limit set out under section 58(2) of the Act.

### Conclusion

Pursuant to section 67 of the Act, I grant the Former Tenants a Monetary Order in the amount of **\$40,629.60**. The Former Tenants are provided with this Order in the above terms and the Purchaser must be served with this Order as soon as possible. Should the Purchaser fail to comply with this Order, this Order may be filed in Court and enforced as an Order of the Court.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated order, nor my authority to render them, are affected by the fact that this decision and the associated order were issued more than 30 days after the close of the proceedings.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: November 25, 2022

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Residential Tenancy Branch