



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** FFT MNECT

### **Introduction**

This hearing was reconvened from an adjourned hearing originally scheduled for September 15, 2022.

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

RR appeared for the landlords in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. Both parties confirmed that they understood.

As the parties were in attendance, I confirmed that there were no issues with service of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' application. As both parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

### **Issues(s) to be Decided**

Are the tenants entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on April 1, 2001, and ended on October 31, 2021 after the home was sold, and the tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use. Monthly rent was set at \$1,461.95, payable on the first of the month. The effective date of the 2 Month Notice was December 31, 2021, but the tenants exercised their option to move out earlier.

It is undisputed by the landlords that they had sold the home on January 22, 2022. The landlord testified that their intention was to occupy the home, as demonstrated by the two year fixed term mortgage, but due to the local floods that happened on November 15, 2021, the home was damaged. The landlord testified that the water in the home was at least two inches deep at the time of possession on December 31, 2021, and the carpets were black. The landlord also testified that the odour of cannabis was extremely strong, and as non-smokers, the landlord and family could not tolerate the smell.

The landlord testified that they had sold the home immediately, without any showings, and suffered a monetary loss for breaking the fixed-term mortgage. The landlord testified that they did not file any insurance claims due to delays, and fixed the home themselves. The landlord testified that they had purchased the home for \$780,000.00, and sold the home for \$1.2 million, which the landlords feel is still below market value. The landlord testified that they were concerned about future floods.

The tenants are seeking compensation for the landlords' failure to fulfill their obligations by occupying the property.

### **Analysis**

Section 51(2) of the *Act* reads in part as follows:

*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.*

Policy Guideline #50 states the following about “Extenuating Circumstances” in the context of compensation for ending a tenancy under section 49 of the Act.

*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.*

I have considered the testimony and evidence of both parties, and I find that it was undisputed that the landlords had sold the home on January 22, 2022, 22 days after the effective date on the 2 Month Notice. In consideration of Policy Guideline #50 and the definition of “extenuating circumstances”, I find that the reason provided by the landlords fails to meet the criteria for “extenuating circumstances”.

Although I am sympathetic towards the fact that the home suffered damage during the flood in November 2021, I am not satisfied that the home was damaged to the extent that the landlord could not occupy the home after repairs and remediation. Although the landlord submitted photos and described the water as at least two inches deep, the landlord confirmed that no insurance claims were filed, and that they had attempted to perform the repairs themselves. The landlords did not submit any professional reports confirming that the home was not safe for occupation, or that the damage was so great that the home could not be repaired. Although the landlords observed the carpet to be black and a strong odour in the home, I am not satisfied that this could not have been properly remediated through the proper and professional remediation.

Although I believe that the landlords did have the genuine intention of moving into the home when they originally purchased it, I am not satisfied that the reason provided for selling the home meet the definition of extenuating circumstances. The landlords only waited until January 21, 2022 to relist the home, 21 days after taking possession. Although I accept the landlord’s testimony that the home was not in the condition that they wanted, I am not satisfied that circumstances had changed so drastically that they could no longer occupy the home at all. The landlords did not provide sufficient evidence to support why they could not repair and remediate the home instead of selling it. Changing one’s mind does not qualify as an “extenuating circumstance”, and therefore I find that the tenants are entitled to compensation equivalent to 12 times the monthly rent as required by section 51(2) of the Act for the landlord’s noncompliance.

As the tenants were successful in their claim, I allow them to recover the filing fee.

**Conclusion**

I issue a **\$17,643.40** Monetary Order in favour of the tenants for compensation under section 51(2) of the *Act*, and for recovery of the filing fee.

The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be 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: November 2, 2022

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Residential Tenancy Branch