



# 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 December 19, 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

One of the Landlords, A.H., and the Tenants both attended the hearing and provided affirmed testimony. Both parties confirmed receipt of each other's evidence, and no issues were raised with respect to service of the documents.

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

- Is the Tenant entitled to compensation for money owed or damage or loss under section 51 of the Act?

### Background and Evidence

The tenancy agreement provided into evidence shows that monthly rent was \$1,250.00 per month. The Tenants received the 2 Month Notice to End Tenancy for Landlord's

Use of the Property (the Notice) on or around September 9, 2021, with an effective date of November 30, 2021. The Tenants indicated on their application that they moved out around October 30, 2021. The Tenants provided a copy of the Notice into evidence, and it indicates the following ground as a reason to end the tenancy:

- *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.*

At the bottom of the second page of the Notice, the Landlords named on this application are listed as the purchasers of the rental unit.

The Tenants stated that after they moved out, they noticed a listing went up on Facebook to advertise the rental unit they just moved out of. The Tenants provided a copy of this listing, and stated they saw it posted on December 3, 2021.

The Landlord stated that they put an offer on this house, which was accepted, on August 20, 2021. The Landlord explained that they took possession of the rental unit on December 1, 2021. The Landlord stated they went to the rental unit to view it a couple times on December 1 and 2, 2021. However, the Landlord stated that she had a serious fall on December 3, 2021, where she suffered injuries which made her unable to walk or work for months.

The Landlord stated that she and her husband bought the property and it was their plan to move into this house and live there while they built another house in another location. The Landlord stated that the second home they built was just completed, as of October 2022, and it has only recently become habitable. The Landlord further explained that her injury was such that she was off work completely for 2 months, and was only able to partially return to work on the 3<sup>rd</sup> month. The Landlord stated that her husband is frequently out of town for work, which made it nearly impossible for her to move into the rental unit, as planned, because he wouldn't be around enough to help her with day-to-day tasks and including using the stairs.

The Landlord explained that there were too many stairs at the rental unit, and the laundry was in the basement, so living there with the injury she had would have been impossible. The Landlord stated that rather than move into the rental unit, she lived with her daughter, who had a wheelchair ramp at the front of her house. The Landlord provided a photo of her daughter's house, with the wheelchair ramp.

The Tenant stated that he works for a garage door company, and in the spring of 2021, his company was contacted to install a garage door at the Landlord's other residence, which was newly constructed and completed in October 2022. The Tenants do not believe the Landlords ever had an intention to move into the rental unit, since they were building this other second house, and were all along.

The Landlord stated that their plan was always to live in the rental unit, because it was closer to town, while they took the following year to construct their other home. However, they never were able to move into the rental unit in December 2021 because of the Landlord's injury.

The Landlord provided medical documentation confirming her issues in December 2021, as well as her return-to-work paperwork that corroborates that she was off work for a significant period of time due to her injury.

### 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 RENOVATIONS 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:

- 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.

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.*

I note the Landlord acknowledged that they did not follow through with the stated purpose or grounds listed on the Notice, since they did not move in. As such, I am satisfied the Landlords breached section 51(2) of the Act.

This typically entitles the Tenant to compensation. However, the issue now becomes whether or not the Landlord has sufficiently demonstrated that there were extenuating circumstances such that they should be excused from accomplishing the stated purpose on the Notice and from paying the Tenants compensation.

***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*

I have considered the Landlord's explanation regarding why they never moved into the rental unit. The Landlord stated that her injury and medical issues were such that it would not have been possible to live in the rental unit, given the stairs, and location of the laundry, which is why they immediately reposted the unit for rent once the Landlord

injured herself on December 3, 2022. I note the Tenants do not feel the Landlords had any intention to move in, especially since they had another house they were building.

I have reviewed the testimony and evidence on this matter, and I find the Landlord has provided a detailed and compelling explanation as to the fact that she suffered a significant injury, which was significant enough to make her unable to work, and walk properly. I also accept that this would have caused significant challenges for the Landlord if she had tried to live in the rental unit, given the numerous sets of stairs. I am mindful that the Landlords were also building another house, which only recently completed in the fall of 2022. However, I do not find that building a second home precludes the Landlords from living in the rental unit, for at least 6 months, while their other house is being built. Had the injury not occurred, this could have allowed the Landlords to comply with the requirements under section 51(2), while still building their second home.

I found the Landlord's testimony and explanation is reasonable, and is supported by the medical and other documentary evidence. I find it is reasonable, after such a significant injury, to reassess plans, and change course (re-rent the unit).

When viewing the totality of the situation, I find this situation is extenuating such that it would have substantially contributed to the Landlord's inability to accomplish the stated purpose. Overall, I find the Landlord has sufficiently demonstrated that the circumstances are sufficiently extenuating. Pursuant to section 51(3), I excuse the Landlord from having to pay 12 months compensation for breaching section 51(2).

I dismiss the Tenant's application, in full, without leave.

### Conclusion

I dismiss the Tenant's application in full, without leave.

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: December 20, 2022