



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC, FFT

### Introduction

On April 8, 2022, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation based on a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Tenant C.P. attended the hearing, with S.K. attending as an advocate for the Tenant. The Landlord attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that their Notice of Hearing and evidence package was served by registered mail on April 22, 2022, to the Landlord's address on the Notice (the registered mail tracking number was noted on the first page of this Decision). However, he stated that he did not check to see if the Landlord could view their digital evidence pursuant to Rule 3.10.5 of the Rules of Procedure. He testified that this package was returned to sender.

The Landlord advised that he did not receive this package as he vacated that address on or around May 15, 2022. As well, he stated that he did not inform the Tenants of this, or provide them with a new service address. Given when this package was mailed out, I find it more likely than not that it would have been delivered prior to May 15, 2022. As such, I am satisfied that the Landlord likely refused service of this package, or elected not to pick it up. Regardless, Section 90 of the *Act* states that documents served by mail are deemed to have been received after five days. Based on this, I am satisfied that the

Landlord was deemed to have received the Tenants' Notice of Hearing and evidence package five days after it was mailed. As such, I have accepted the Tenants' documentary evidence and will consider it when rendering this Decision. However, I have excluded the Tenants' digital evidence and will not consider it when rendering this Decision.

The Landlord advised that he did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation in the amount of one month's rent?
- Are the Tenants entitled to a Monetary Order for compensation in the amount of twelve months' rent?
- Are the Tenants entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on November 28, 2020, and that the tenancy ended on or around February 1, 2022, when the Tenants gave up vacant possession of the rental unit. Rent was established at an amount of \$2,450.00 per month and was due on the first day of each month. A security deposit of \$1,225.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The parties also agreed that the Notice was served to the Tenants by email on December 31, 2021. The reason the Landlord served the Notice is 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 intends in good faith to occupy the rental unit." The effective end date of the tenancy was noted as February 28, 2022, on the Notice.

The Tenant advised that they were seeking compensation in the amount of **\$2,450.00** because the Landlord served them the Notice, and they were entitled to this amount of

compensation pursuant to Section 51 of the *Act*. He referenced documentary evidence submitted to demonstrate that they requested this compensation from the Landlord; however, the Landlord continually claimed to have sent it, but never did.

The Landlord acknowledged that he has not paid this compensation to the Tenants, but he alleges that it was his belief that he did. He stated that he will check his bank statements again, despite this being the same excuse he provided to the Tenants in their text message exchanges.

The Tenant advised that they were also seeking compensation in the amount of **\$29,400.00** because the purchaser did not use the property for the stated purpose on the Notice. The Landlord testified that all of the conditions for the sale of the rental unit had been satisfied and that the purchaser asked him, in writing, to serve the Notice because the purchaser, or a close family member, intended in good faith to occupy the rental unit. He submitted that the purchaser took possession of the rental unit on March 1, 2022.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Tenants' claims for one month's compensation owed to them when they were served the Notice, I find it important to note that Section 51 of the *Act* reads in part as follows:

**51** (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

*(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.*

Given that the consistent and undisputed evidence is that the Landlord served this Notice, the Landlord is required to compensate the Tenants in the amount of one month's rent owed under Section 51 of the *Act*. Based on a review of the evidence, in conjunction with the tenor of the Landlord's testimony, I find it dubious that the Landlord simply did not realize that he had not compensated the Tenants. I find it more likely than not that the Landlord is being untruthful, and that he was intentionally attempting to avoid paying the Tenants this compensation. As the Tenants were entitled to the one month's compensation after being served this Notice, and as the Landlord has not

compensated them in this amount as required by law, I grant the Tenants a monetary award in the amount of **\$2,450.00** to satisfy this debt.

Regarding the Tenants' claim for 12 months' rent, Section 51 of the *Act* below outlines compensation requirements if the Landlord did not use the property for the stated purpose:

**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.*

However, the consistent and undisputed evidence is that all of the conditions for the sale of the rental unit had been satisfied and that the purchaser asked the Landlord, in writing, to serve the Notice because the purchaser, or a close family member, intended in good faith to occupy the rental unit. Moreover, the purchaser took possession of the rental unit on March 1, 2022. Clearly in this instance, the purchaser would be the party responsible for using the property for the stated purpose after the effective date of the Notice, not the Landlord. As such, I am satisfied that the Tenants should have made a separate Application against the purchaser for this claim. Consequently, I dismiss this claim against the Landlord in its entirety. The Tenants are at liberty to make a separate Application against the purchaser for the appropriate remedy.

As it is clear that the Landlord did not compensate the Tenants in the amount of one month's rent, I find that they were partially successful in this Application. As such, I find that the Tenants are entitled to recover the \$100.00 filing fee.

Pursuant to Sections 51, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Landlord to the Tenants**

Item	Amount
One month's rent compensation	\$2,450.00
Filing fee	\$100.00
<b>Total Monetary Award</b>	<b>\$2,550.00</b>

Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$2,550.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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. Only the amount unpaid by the Landlord will be enforceable.

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 14, 2022

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Residential Tenancy Branch