



# 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 the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- compensation in the amount of \$39,300.00 due to the Landlords having ended the tenancy and not complied with the Act or used the rental unit for the stated purpose pursuant to section 51; and
- authorization to recover the filing fee for this application from the Landlords pursuant to section 72.

The Landlords, the Tenant, and the Tenant's spouse TV attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

All attendees at the hearing were advised that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

### Preliminary Matter – Service of Dispute Resolution Documents

The Landlords confirmed receipt of the Tenant's notice of dispute resolution proceeding package (the "NDRP Package"). I find the Landlords were served with the NDRP Package in accordance with section 89(1) of the Act.

TV testified that the Tenant's documentary evidence was sent to the Landlords via email on November 17, 2022. The Landlords acknowledged receipt of the Tenant's email with some evidence. TV acknowledged that a letter from a neighbour (the "Neighbour's Letter") submitted to the Residential Tenancy Branch on November 21, 2022 was not served on the Landlords. Based on the parties' testimonies, I find the Landlords were sufficiently served with a copy of the Tenant's documentary evidence, except the Neighbour's Letter which I exclude from consideration for the purpose of this hearing.

The Tenant acknowledged receipt of the Landlords' documentary evidence. I find the Tenant was served with the Landlord's evidence in accordance with section 88 of the Act.

### Issues to be Decided

1. Is the Tenant entitled to compensation under section 51 of the Act?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The rental unit is the main suite of a house. The rental property contains a separate basement suite rented to different tenants.

This tenancy commenced on October 1, 2019 and ended on February 1, 2022. At the time that the tenancy ended, rent was \$3,275.00 per month.

The parties submitted copies of a two month notice to end tenancy for landlord's use of property dated December 30, 2021 (the "Two Month Notice") into evidence. This notice is signed by one of the Landlords, BK, and states that the rental unit will be occupied by the "landlord or the landlord's spouse". It has an effective date of February 28, 2022. The parties agreed the Tenant was served with the Two Month Notice on or around December 30 or 31, 2021.

The Landlords provided a written statement and gave testimony as follows:

- The Landlords and their family were renting a home in another city where the Landlords' children went to school. In mid-December 2021, the Landlords received a two month notice to end tenancy from their own landlords, effective March 31, 2022. The Landlords looked to lease another home but were unable to find something suitable. The Landlords decided that their only option was to move back into the rental unit.
- The Landlords issued the Two Month Notice to the Tenant at the end of December 2021. In January 2022, the Tenant and TV informed the Landlords that their family would be moving out early on February 1, 2022. The parties

completed a walkthrough on February 1, 2022. The Landlords returned the Tenant's security deposit and pet damage deposit in full, along with one month's rent as compensation for the Two Month Notice.

- The Landlords and their family moved into the rental unit on February 9, 2022 and lived there until August 20, 2022, when they leased another home in their original community. During the time their family lived in the rental unit, the Landlords had to commute their children back to their schools in another city, which was a 3-hour daily drive. The Landlords submitted a photograph of the NDRP Package with a sticker to show that the Landlords had redirected their mail to the rental unit during this time.
- The Landlords' plan was to return to their previous community for the start of school in September 2022. The Landlords leased a home and moved back to their community on August 20, 2022. The rental unit was rented to new tenants beginning on September 1, 2022. The Landlords submitted copies of their own tenancy agreement and the tenancy agreement for the new tenants in the rental unit into evidence.
- The Landlords did list the rental property for sale at one point "with the thought of accepting a sale date of September 1st [2022] or beyond". The Landlords had planned to buy a home in their community once the rental property sold. However, the real estate market "drastically slowed down", and the Landlords took the rental property off the market shortly after listing. The Landlords submitted a state of title certificate for the rental property dated October 13, 2022, which shows that the Landlords remain owners of the property as joint tenants.

The Landlords also submitted a notice of rent increase dated October 6, 2021 with an effective date of February 1, 2022, which the Landlords say was given to the Tenant before the Landlords found out they had to move.

In response, the Tenant testified that the Landlords always had their mail sent to the rental unit and had come to collect the mail, even while the Tenant's family was living there.

TV testified that the neighbour who lives directly beside the rental unit on the right-hand side, AS, had drafted the Neighbour's Letter, which includes AS's observations of the rental unit from January 31, 2022 to September 1, 2022.

TV testified that according to the Neighbour's Letter, both AS and her husband work from home, and from their office space they can observe vehicles coming and going. TV

testified AS was of the view that someone tried to make it appear as if there were people living in the rental unit, but no one was living there. TV stated that according to AS, there was renovation in the rental unit during the first few weeks of February 2022. In addition, AS had seen a moving truck with staging furniture for the rental unit.

TV argued that the Landlords' intention for issuing the Two Month Notice was to sell the property.

TV referred to photographs of a "for sale" sign on the property and an MLS listing submitted into evidence by the Tenant. TV testified that the rental property was listed for sale on March 10, 2022. TV testified that a YouTube video of the property showed that the rental unit was empty and no one was living there. TV testified that the rental unit had new floors and a new vanity upstairs. TV testified that the price for the rental unit was raised on March 16, 2022.

TV stated that not long after the Tenant sent the NDRP Package to the Landlords, the "for sale" sign came down.

TV testified that after the "for sale" sign was removed, it did not appear to AS that someone was living in the rental unit full-time. TV stated that AS didn't see anyone in the backyard, while the current and previous occupants regularly use the backyard. AS also observed that regular garbage and compost collections were missed.

TV testified that according to AS, there was little consistency of vehicles coming and going from the property. TV stated AS saw only one vehicle rather than two vehicles consistently. TV stated AS also said she had seen people carrying suitcases.

TV testified that her daughter had a package redirected to the rental unit and when she went to pick it up, she said the rental unit was bare inside and looked put together for sale. TV testified that she and the Tenant would also drive by the rental property, and they did not see the Landlords' cars there.

In reply, the Landlords questioned the contents of the Neighbour's Letter. The Landlords emphasized that they fully lived in the rental unit with their children during the relevant period. The Landlords stated they had gone on two vacations in that period, which may explain the suitcases. The Landlords testified that their children participate in extracurricular activities with a lot of training, and that BK spent a substantial amount of time driving the children to and from these sessions. The Landlords stated they had put out their garbage every two weeks.

The Landlords denied that the YouTube video showed the rental unit to be empty. The Landlords testified that the furniture in the rental unit was what their family had lived with. The Landlords testified that the furniture belongs to them. The Landlords stated that there was damage in the rental unit due to LED strips, so the Landlords had some painting done. The Landlords testified that the only flooring replaced was in a small powder room. The Landlords testified that the work was started on February 2, 2022 and took a few days to complete. The Landlords denied that they removed the listing for the property due to having received the Tenant's NDRP Package. The Landlords explained that their realtor told them it was "worth a shot" to try for an extended sale since buyers had been making subject-free offers at the time.

The Landlords denied that they had mail sent to the rental unit while the Tenant's family was living there. The Landlords stated that had been a few missed items that were sent to the rental unit despite the mail forwarding they had set up.

The Landlords testified that there was a tenant living in the basement suite who would have witnessed the Landlords living there. The Landlords argued that if they had known about the contents alleged in the Neighbour's Letter before the hearing, they could have provided more evidence (e.g. cable and internet bills, testimony from their downstairs tenant) to confirm that they lived at the rental unit.

### Analysis

#### *1. Is the Tenant entitled to compensation under section 51 of the Act?*

Section 49(3) of the Act permits a landlord who is an individual to end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 49(1) defines an individual's "close family member" to include the individual's parent, spouse, or child, or the parent or child of that individual's spouse.

I have reviewed a copy of the Two Month Notice and find that it is a valid notice to end tenancy in form and content pursuant to section 52 of the Act. I find the parties' tenancy was ended on February 1, 2022 under the Two Month Notice and in accordance with section 49(3) of the Act.

The Tenant seeks compensation of 12 months' rent from the Landlords under section 51(2) of the Act, which states:

**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 the landlord or purchaser, as applicable, does not establish that

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

(b) 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.

Policy Guideline 50. Compensation for Ending a Tenancy ("Policy Guideline 50") states:

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) for at least six months. 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.

In this case, I find the stated purpose of the Two Month Notice was for the Landlords to occupy the rental unit.

Based on the evidence before me, I am satisfied on a balance of probabilities that the Landlords had occupied the rental unit as their home between February 9, 2022 and August 20, 2022.

I find the Landlords' testimony under oath that they had occupied the rental unit during this period to be consistent with the corroborating evidence that they have submitted, in particular the two month notice received from their own landlord and the Landlords' tenancy agreement for a new home beginning on August 20, 2022. I accept that the Landlords had issued the Two Month Notice due to the change in their own housing situation.

In contrast, I find the Tenant's evidence regarding statements attributed to AS to be hearsay, and while admissible under section 75 of the Act, I do not find this evidence to

be particularly reliable. I find the statements attributed to AS about vehicles at the rental unit to lack sufficient detail to be persuasive. In any event, I do not find AS's observations, as described by TV, to necessarily contradict the Landlords' testimony about how they resided at the rental unit during the relevant period. I accept that the Landlords would have had to drive their children to and from school and extracurricular activities. I find AS's stated opinion that the Landlords were "trying to make it appear as if there were people living in the rental unit" to be speculative.

I find the Landlords listed the rental property for sale in March 2022, but the property was never sold. I accept the Landlords' testimony that they continued to occupy the rental unit during this time and owned the furniture inside the rental unit which they used.

Based on the foregoing, I find the Landlords accomplished the stated purpose of the Two Month Notice within a reasonable time after the tenancy ended on February 1, 2022, and that the rental unit was used for the stated purpose for at least six months' duration.

I conclude the Tenant is not entitled to compensation under section 51(2) of the Act. The Tenant's claim under this part is dismissed without leave to re-apply.

*2. Is the Tenant entitled to recover the filing fee?*

The Tenant has not been successful in this application. I decline to award the Tenant recovery of her filing fee under section 72(1) of the Act.

Conclusion

The Tenant's application is dismissed in its entirety without leave to re-apply.

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

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Residential Tenancy Branch