



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing was convened as a result of the Applicant's application under the *Residential Tenancy Act* (the "Act") for:

- compensation in the amount of \$18,000.00 due to the Respondents 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 Respondents pursuant to section 72.

The Applicant and the Respondents attended this hearing. The Applicant was represented by his legal counsel OM. The Applicant's assistant CM was also in attendance.

On October 27, 2022, the Applicant submitted a request for document production under Rule 5.3 of the Residential Tenancy Branch Rules of Procedure. That request resulted in an interim decision November 3, 2022, in which I reserved my decision on the request to the date of the hearing. During this hearing, it was determined that a copy of the document requested, a 2 Month Notice to End Tenancy for Landlord's Use of Property, is not necessary because the facts surrounding this document, including its form and content, are not disputed by the parties. As such, I have not made any orders for document production.

### Background and Evidence

The Respondents purchased the subject property from the Applicant in March 2021. Prior to the sale, the subject property was used by the Applicant as an office for his business.

According to the Respondents, their intention was to significantly renovate the subject property for their family to live in, and they expected it would take time to obtain the permits they needed. Rather than leaving the property empty in the meantime, the Respondents offered to rent the property back to the Applicant.

The parties entered into a 1-page rental agreement of the subject property dated December 20, 2020 (the “Rental Agreement”), with the Respondents as “landlords” and the Applicant as the “tenant”. This Rental Agreement was prepared by the Applicant’s realtor and had a commencement date of March 4, 2021. It included the following terms:

- a. The length of tenancy was “month to month”.
- b. Rent was \$1,500.00 per month, to be “paid by the first on the day of the month by postdated cheques monthly” [sic].
- c. “One month’s notice to be given by the landlord to the tenant when they need to move out. If the landlord knows more than a month in advance when the tenant needs to move out they will let the tenant know.” [sic]

According to the Respondents, after they purchased the subject property, it became apparent that the major renovation they had envisioned would not be feasible, so they decided to proceed with a smaller and simpler interior renovation before moving their family in.

On March 10, 2021, the Respondents gave the Applicant a letter (the “March 10, 2021 Letter”) with a one month notice to end the rental of the subject property effective April 10, 2021. This letter also states:

*Given that we now plan to move into the house we must exercise this contract term at this point.*

*As we will need to do some updates to the house prior to moving in with our family, we are open to working with you to extend the tenancy beyond the above mentioned date, if we are able to arrange for access for the work to be completed. We look forward to meeting with you to discuss this.*

The Applicant did not accept the March 10, 2021 Letter for ending the tenancy. The Applicant requested the Respondents to serve him with a 2 Month Notice to End Tenancy for Landlord's Use of Property under the Act. The Respondents were asked to correspond with the Applicant's employee, ZM.

It is generally undisputed that on April 26, 2021, the Respondents served the Applicant with signed copies of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated April 26, 2021 (the "2 Month Notice"). Although none of the parties have retained a copy of the 2 Month Notice, it is agreed that the 2 Month Notice was in the approved Residential Tenancy Branch ("RTB") form and had an effective date of June 30, 2021.

According to the Respondents, they were informed through ZM that the Applicant would not be giving the occupancy of the home to the Respondents on July 1, 2021 and would make an application with the RTB to dispute the 2 Month Notice. The Respondents say the Applicant had expressed that he was likely to lose the dispute but the matter would be on hold until the dispute was concluded, and since RTB disputes were backed up, the Respondents would have to wait at least 6 months to move into their home. The Respondents say the Applicant offered to let them move into their home earlier in exchange for the payment of a fee. The Respondents explained that they were very uncomfortable with this offer, but confirmed that RTB disputes were indeed backed up and they would have no recourse until after the dispute resolution process. The Respondents explained they were also paying significant rent, so they agreed to pay the Applicant \$4,500.00 and signed a Mutual Agreement to End a Tenancy effective June 4, 2021 (the "Mutual Agreement").

The Mutual Agreement is in the approved RTB form (#RTB-8). It is generally undisputed that the parties had signed the Mutual Agreement on or around May 7, 2021. The Mutual Agreement has the following terms handwritten on the back and initialled by the parties:

*Terms – requested by tenant*

- \$4500 paid to tenant, half upon signing of RTB-8, and half upon leaving rental un agreed upon condition on June 4/21.*
- full set of keys including front, back, kitchen and garage doors to be provided to landlord on June 4/21.*
- all cameras and security equipment to be removed by June 4/21.*
- rental home to be in good repair and clean by June 4/21.*

According to the Respondents, the Applicant advised them through ZM on May 29, 2021 that the Respondents could get into their home a week earlier for an additional fee. The Respondents declined this offer.

On June 4, 2021, the Respondents completed a walkthrough of the house and the keys handover with ZM.

The Respondents testified that they had engaged a contractor and had been given access with their contractor to look at the house. The Respondents testified that they went away to their cabin in July and August 2021, but were on the phone with their contractor such that work on the house would have begun in July or August 2021. The Respondents testified that the renovation was sufficiently complete by April 2022, at which time the Respondents moved into the subject property. The Respondents confirmed that they have resided at the subject property ever since.

According to the Applicant, there were many visits and requests for visits, including incidences where the Respondents had visited the house “without proper notice”. The Applicant testified that there was a “friend” living in the basement of the house.

The Applicant testified that after the property was sold, he shifted his operations to his other office. The Applicant indicated that after March 25, 2021, his operations at the subject property were “basically storage”. The Applicant described this area as about 30% of the house, and the rest, including kitchen, bathroom, upstairs, and downstairs was occupied by the Applicant’s “friend” and “co-tenant”.

The Respondents testified that they did provide notice via texts and calls prior to entry, and that the Applicant was aware of the Respondents wanting to renovate. The Respondents acknowledged that they did try to access many times. The Respondents stated they had been told by the realtor that the Applicant’s “friend” lived there. The Respondents testified that they were aware of someone living in the basement, which had its own kitchen and bathroom. However, the Respondents testified that the rest of the main floor, including the kitchen, consisted “entirely” of the Applicant’s “offices”. The Respondents explained this was the reason why they had to do extensive renovations.

The Respondents testified that the “offices” were not just being used for storage. The Respondents testified that when they attended at the subject property for a few sessions, in every case there were “multiple staff” present. The Respondents testified that they understood these staff were full-time employees of the Applicant’s property

management business. The Respondents explained they tried to schedule access through the agent, ZM.

The Respondents argued that the tenancy was ended pursuant to the Mutual Agreement rather than the 2 Month Notice.

Counsel for the Applicant argued that the Mutual Agreement was an attempt to contract out of the Act, so it is of no effect under section 5 of the Act. Counsel argued that 11 months for the Respondents to move into their home was not “a reasonable period” under section 51(2) of the Act and according to Residential Tenancy Policy Guideline 50. Counsel argued that the Applicant is therefore entitled to compensation of 12 months’ rent from the Respondents under section 51(2) of the Act.

#### Preliminary Matter – Jurisdiction

For the reasons that follow, I am not satisfied that the parties’ agreement was one to which the Act applies.

Section 2 of the Act states:

##### **What this Act applies to**

2(1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

Section 1 of the Act defines “tenancy agreement”, “rental unit”, and “residential property” as follows:

“tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

“rental unit” means living accommodation rented or intended to be rented to a tenant;

“residential property” means

- (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
- (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
- (c) the rental unit and common areas, and
- (d) any other structure located on the parcel or parcels;

(emphasis added)

Moreover, section 4(d) of the Act states:

**What this Act does not apply to**

4 This Act does not apply to

[...]

- (d) living accommodation included with premises that
  - (i) are primarily occupied for business purposes, and
  - (ii) are rented under a single agreement,

In this case, I find the Respondents rented the subject property to the Applicant from March 4, 2021 to June 4, 2021, pursuant to the Rental Agreement.

However, I find there is no evidence to suggest that the Applicant had lived in the subject property or used the subject property as living accommodation during this time.

I accept the Respondents’ testimony that the entire main floor of the property had been configured to serve as the Applicant’s offices, which was why the Respondents had contemplated extensive renovations in order to make the place their home. I find it is undisputed that when the Respondents purchased the property, it was being used by the Applicant for his business. I accept the Respondents’ testimony that they had seen multiple full-time staff at the subject property when they had attended for preliminary planning with their contractor. I note the Applicant states that his operations at the subject property were transitioned to storage use. However, I find that storage for the Applicant’s business is still occupation for a business purpose, rather than use as living accommodation. Moreover, I am not persuaded that the Applicant’s friend had used the

main floor as living accommodation. I accept the Respondents' testimony that the basement had its own kitchen and bathroom, and that they were aware of a friend of the Applicant's living in the basement.

I find that when the subject property was rented to the Applicant under the Rental Agreement, the main floor of the property was occupied for business purposes rather than as living accommodation, such that it did not meet the definition of a "rental unit" under the Act. I find that overall, the subject property was "primarily" used for business purposes by the Applicant before and during the 3-month tenancy. I further find that any living accommodation in the basement would be excluded from the Act by virtue of section 4(d), since it was included with premises primarily occupied for business purposes and rented to the Applicant under a single agreement.

I note that although the Applicant also described his friend as a "co-tenant", that person is not a party to the Rental Agreement and is not a party to this application. In my view, it is possible for the Applicant to have had rights and obligations under the Act with respect to his friend living in the basement, and vice versa, if there had been a tenancy agreement between the Applicant and that person for use of the basement as living accommodation. However, I do not find that arrangement to have any bearing on the contract between the parties.

I further note the Rental Agreement signed by the parties does not reference or expressly incorporate any the terms of the Act. Although I find the Respondents to have issued the 2 Month Notice and the parties to have signed the Mutual Agreement in the approved RTB forms, which I find to be at the Applicant's request, I am not satisfied that such actions mean the Act applies in the circumstances.

Based on the foregoing and pursuant to sections 2(1) and 4(d) of the Act, I conclude that the Act does not apply to the Applicant's rental of the subject property under the Rental Agreement.

My authority is only with the Act, and since the Act does not apply, I decline jurisdiction to hear and decide any matters relating to this dispute.

### Conclusion

Pursuant to section 62(1)(b) of the Act, I decline jurisdiction with respect to this dispute.

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 15, 2022

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Residential Tenancy Branch