



# 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 an Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for money owed or compensation for damage or loss, and the recovery of their filing fee paid for this application. The matter was set for a conference call.

Both the Tenants and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

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

- Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss pursuant to section 51 of the *Act*?
- Are the Tenants entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Tenants testified that their tenancy began on 1 April 2017, that rent in the amount of \$1,595.00 was to be paid by the first day of each month, and at the outset of the tenancy, the Tenants had paid a \$750.00 security deposit and a \$750.00 pet damage deposit. The Tenants submitted a copy of the tenancy agreement into documentary evidence.

The Tenants testified that they were served with a Two-Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice") dated February 12, 2022. The Notice indicated that the Tenants were required to vacate the rental unit as of April 30, 2022. The reason checked off by the Landlord within the Notice was as follows:

- *All 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.*

Both parties agreed that the Tenants moved out of the rental unit, in accordance with the Notice on April 1, 2022, and that the Landlord returned the security and pet damage deposits to the Tenants in accordance with the *Act*. The Tenants submitted a copy of the Notice into documentary evidence.

The Tenants testified that on May 3, 2022, they were contacted by their previous neighbour, at the rental property, who advised them that a new renter had moved into their old rental unit, and not the new owner.

The Tenants are requesting compensation for the rental property not being used as indicated on the Notice.

The Landlord testified that they took over ownership of this rental unit on May 1, 2022, and that although they had originally intended to move a family member into the rental unit, they decided to rent the unit when they discovered that the family member had health issues that would prevent them from living in the rental unit.

The Landlord testified that they contacted their real estate agent and asked them to call the Tenants to see if they wanted to stay in the rental unit, but the Tenants had declined that offer. The Landlord confirmed that a new renter moved into the rental unit in May 2022.

The Tenants testified that they did not receive a call from the Landlord's real estate agent advising them they could stay in the rental unit.

The Landlord was asked to provide an account of the timeline of their purchase of the rental property, the notice to end tenancy, the discovery of the family member's illness, their interactions with their real estate agent and the new renter moving into the unit. The Landlord testified that they were not prepared to speak to the timeline of events in this case and could not recall dates.

The Landlord testified that they had been under the belief that the previous Tenants and the details of that tenancy were not their problems to deal with but that they now understand their responsibility as the new owner. The Landlord confirmed that they submitted no documentary evidence to these proceedings.

### Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

Before me, I have an application pursuant to section 51(2) of the *Act*, which states the following:

#### ***Tenant's compensation: requirement to vacate***

*51.1 (1) Subject to subsection (2) of this section, if a fixed term tenancy agreement includes, in a circumstance prescribed under section 97 (2) (a.1), a requirement that the tenant vacate the rental unit at the end of the term, the landlord must pay the tenant 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 date the tenancy ended, to satisfy the prescribed circumstance, or*

- (b) the rental unit is not used in a way that satisfies the prescribed circumstance for at least the period of time prescribed under section 97 (2) (a.2), beginning within a reasonable period after the date the tenancy ended.*
- (2) The director may excuse the landlord from paying the tenant the amount required under subsection (1) if, in the director's opinion, extenuating circumstances prevented the landlord from*
  - (a) satisfying, within a reasonable period after the date the tenancy ended, the prescribed circumstance, or*
  - (b) using the rental unit in a way that satisfies the prescribed circumstance for at least the period of time prescribed under section 97 (2) (a.2), beginning within a reasonable period after the date the tenancy ended.*

I accept the agreed-upon testimony of these parties that the Landlord did move a new renter into the rental unit as of May 2022, less than one month after the effective date of their notice to end this tenancy. I find that the Landlord was in breach of sections 49 and 51 of the *Act* when they move a new renter into the rental unit within a month of this tenancy ending.

I acknowledge that the illness of a family member may constitute extenuating circumstances that could excuse the Landlord from this section of the *Act*; however, I find that the Landlord's refusal to testify to the details of this possible excuse or provided any evidence in relation to their claim of a possible excuse prevent me from considering it in this case.

Therefore, pursuant to section 51 of the *Act*, I find that the Tenants have successfully proven they are entitled to compensation for the Landlord's breach of the *Act*. I award the Tenants compensation in the amount of **\$19,140.00**, consisting of the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

I grant the Tenants a monetary order in the amount of \$19,240.00, consisting of \$19,140.00 in compensation and \$100.00 in the recovery of the filing fee paid for these proceedings.

Conclusion

I grant the Tenants a Monetary Order in the amount of \$19,240.00. The Tenants are provided with this Order 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.

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: January 17, 2023

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Residential Tenancy Branch