



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNECT, FFT

### Introduction

On May 1, 2022, the Tenants applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking compensation for money owed or damage or loss under the Act, Regulation, or tenancy agreement.

The matter was scheduled as a teleconference hearing. The Landlord and Tenants were present at the hearing. At the start of the hearing, I introduced myself and the participants.

The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence before 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.

### Issue to be Decided

- Are the Tenants entitled to money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

### Background and Evidence

The Tenants and Landlord testified that the tenancy began on July 1, 2013, as a one-year fixed term tenancy that continued thereafter on a month to month basis. Rent in

the amount of \$2,800.00 was due to be paid to the Landlord by the first day of each month.

The Landlord decided he wanted to live at the rental unit and asked his agent to end the tenancy of the Tenants. The Landlord's agent issued a Two Month Notice to End Tenancy for Landlords Use of Property dated September 28, 2021 ("the Two Month Notice"). The effective date of the Two Month Notice was November 30, 2021.

The reason cited for ending the tenancy within the Two Month Notice is:

*The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*

The Tenants accepted the Two Month Notice and moved out of the rental unit on November 28, 2021. The Tenants provided a copy of the tenancy agreement and a copy of the Two Month Notice.

The Tenants testified that they received a text message from the Landlord's agent that the Landlord was moving into the unit and was going to make minor changes to the home. The Tenants stated that the Landlord decided to extensively renovate the home and they should have received a Four Month Notice to End Tenancy for Renovation or Repairs.

The Tenants testified that the Landlord was not ignorant regarding the condition of the home and his property manager was recently at the home as there were two major floods that required renovation that the Landlord was aware of.

The Tenants testified that the Landlord did not move into the rental unit until July 2022 which was not timely and that his home renovations are not sufficient to be considered an exceptional circumstance.

The Tenants are seeking compensation of \$33,600.00 which is twelve months of rent payable under the tenancy agreement.

In reply, the Landlord testified that he wanted to make changes to the home in his own style and it took a lot longer than he expected. He testified that he asked his agent to end the tenancy and his agent issued the Two Month Notice on his behalf.

The Landlord testified that he moved into the home on July 22, 2022. He testified that he is still living at the home and is occupying the entire home with no intention to re-rent the home.

When the Landlord was asked if there were any exceptional circumstances that prevented him from achieving the purpose of the Two Month Notice. The Landlord replied that once the house was vacant he viewed it and realized the condition and considered the areas he wanted to address. After discussing this with his contractor they decided to renovate the whole house which was scheduled to take 3 - 4 months. The renovation took a lot longer than he expected as there were delays with contractors and tradespeople in performing the renovations which prevented him from moving into the home earlier. He submitted that there were delays with product availability, labour shortages, other unexpected issues and electrical inspections.

The Landlord provided a document from a renovation company which states that they were hired by the Landlord to perform the renovations which was originally planned to be a 3- 4 month period. The document states that the project was extended due to various reasons including product delays, upgrades and inspections.

The Landlord provided photographic evidence showing that the home was renovated.

### Analysis

The parties are in agreement that the Landlord's agent issued a Two Month Notice to End Tenancy for Landlord's Use of Property to the Tenants.

With regard to the Tenants' submissions that the Landlord should have served them with a Four Month Notice to End Tenancy Renovation or Repairs; I find that this was not possible in September 2021, because the legislation had recently changed. Effective July 1, 2021, the Act was amended, to require landlords to apply for a dispute resolution hearing requesting an order to end a tenancy for the purpose of renovation or repair to preserve the rental unit. A landlord must satisfy an Arbitrator that required repairs are so extensive that vacant possession of the rental unit is required.

I note that ending a tenancy for the reason of renovation or repair does not include a requirement for the Landlord to occupy the rental unit after the renovations and/or repairs are complete. A Landlord may re-rent the unit to a new Tenant, but in some circumstances a landlord must offer a first right of refusal to the vacating Tenant.

On the present case, the Landlord issued the Two Month Notice stating he wanted to occupy the home himself and he decided to change the style of the home to his liking which is a different reason for ending the tenancy from that of an obligation under the Act to maintain a rental unit or make necessary repairs to a rental unit.

Section 49(3) of the Act permits a landlord to end a tenancy with a Two Month Notice if the landlord or a close family member intends in good faith to occupy the rental unit.

The Landlord completed his renovations and moved into the home and sold his condo that he had been living in. The Landlord's primary intent was to end the tenancy and to occupy the rental unit. The Landlord's renovation plans were secondary to the purpose of the Two Month Notice. I find that the Landlord issued the proper notice to end the tenancy for the intended purpose and in good faith. The Tenants accepted the Notice and moved out.

Residential Tenancy Policy Guideline # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser, or Close Family Member explains the concept of good faith and vacant possession as follows:

*"Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement..."*

***Vacant possession***

*Other definitions of "occupy" such as "to hold and keep for use" (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (see Section E). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.*

Section 51(2) of the Act provides that a landlord must pay the tenant 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:

- (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.*

Residential Tenancy Policy Guideline # 50 Compensation for Ending a Tenancy provides:

*A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.*

Section 51.1(2) of the Act provides that 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.*

### Compensation for Breach of Section 51

After considering the Act, the policy guidelines, and the testimony and evidence of the Tenants and Landlord, I make the following findings:

I find that the Landlord did not move into the home until July 22, 2022, which is almost 8 months after the date the Tenants vacated the rental unit. I take guidance from Policy Guideline #50 that provides a reasonable period for the Landlord to start living in the

rental unit would be about 15 days. I find that almost 8 months after the effective date of the Two Month Notice is not a reasonable period to occupy the rental unit.

I find that the Landlord breached section 51(2) of the Act and must pay the Tenants the equivalent of 12 times the monthly rent payable under the tenancy agreement unless I find there were extenuating circumstances.

I must now consider whether or not there were extenuating circumstances present that stopped the Landlord from accomplishing the purpose of the Notice within a reasonable time.

I find that the purpose of the monetary penalty under section 51(2) of the Act is to promote honesty and deter gross negligence by preventing bad faith evictions where a landlord ends a tenancy under the guise of occupying the unit but then immediately re-rents the unit, often at a much higher rent, or sells it without occupying the unit for a 6-month period.

With respect to good faith, there is no evidence to establish that the Landlord intended to defraud or deceive the Tenants. I find that the Landlord's intention was to occupy the home and he wanted to make improvements before they moved in.

I find that the Landlord did not re-rent the unit to a new tenant or sell it, and he did have renovations completed for almost 8 months. I am mindful that the policy guideline definition of occupy provides that to hold the rental unit and keep for use is inconsistent with the intent of section 49 and 51(2) of the Act - *except in extenuating circumstances*.

In my view, a delay to occupy the unit due to renovations is reasonable. I accept the Landlord's evidence that the renovation took a lot longer than he expected as there were delays with contractors, supply, and tradespeople which prevented him from moving in earlier. I find that delays for these reasons are common in the construction industry and can be considered extenuating circumstances.

While I acknowledge that the Landlord did not move into the unit in a timely manner and has not occupied the rental unit for 6 months as of yet, I find that the Landlord issued the Two Month Notice in good faith and has established that there were extenuating circumstances present that make it unjust for the Landlord to have to pay compensation to the Tenants.

The Tenants' application for compensation from the Landlord for breach of section 51(2) of the Act is dismissed without leave to reapply.

### Conclusion

I find that the Landlord issued the Two Month Notice in good faith and has established that there were extenuating circumstances present making it unjust for the Landlord to have to pay compensation to the Tenants.

The Tenants' application for compensation from the Landlord for a breach of the Act is dismissed.

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 20, 2023

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Residential Tenancy Branch