



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNETC

### Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied for compensation related to being served with a Two Month Notice to End Tenancy for Landlord's Use.

The male Tenant stated that on October 07, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in September of 2022 was sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On December 15, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenants, via email, on December 14, 2022. The male Tenant stated that the Tenants agreed to accept documents by email and that they received these documents. As such, this evidence was accepted as evidence for these proceedings.

On January 31, 2023 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenants, via email, on January 31, 2023. The Tenants acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On February 01, 2023 the Tenants submitted evidence to the Residential Tenancy Branch. The male Tenant stated that this evidence was served to the Landlord, via email, on February 02, 2023. The Landlord stated that the Landlord agreed to accept documents by email and that the Landlord received these documents. As such, this evidence was accepted as evidence for these proceedings.

On February 04, 2023 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenants, via email, on February 04, 2023. The Tenants acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On February 08, 2023 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenants, via email, on February 08, 2023. The Tenants acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant, with the exception of the Witness for the Landlord, affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Although I have authority to require participants to affirm that they will speak the truth, it is not mandatory. I simply forgot to require the Witness for the Landlord to affirm that he would speak the truth during the proceedings. I find that my failure to have the Witness give affirmed testimony has no negative impact on his testimony.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant, with the exception of the Witness for the Landlord, affirmed they would not record any portion of these proceedings.

#### Issue(s) to be Decided

Are the Tenants entitled to compensation, pursuant to section 51(2) of the *Act*, because steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental

unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

### Background and Evidence

The Landlord and the Tenants agree that:

- this tenancy began on June 01, 2016;
- the tenancy agreement the Respondent and the Landlord in attendance at these proceedings as Landlords of the rental unit;
- at the end of the tenancy the monthly rent was \$1,600.00;
- In February of 2022 the Tenants were served with a Two Month Notice to End Tenancy for Landlord's Use, which declared that they must vacate the unit by May 01, 2022;
- the Two Month Notice to End Tenancy for Landlord's Use declared that the rental Landlord is a family corporation and that the Landlord's child will be occupying the unit; and
- the rental unit was vacated by April 30, 2022.

The Tenants submit that nobody lived in the rental unit until early August of 2022, which is supported by witness statements of people who live near the rental unit.

The Landlord stated that:

- the Two Month Notice to End Tenancy for Landlord's Use was served because her son and her son's girlfriend intended to move into the unit;
- her son and her son's girlfriend signed a tenancy agreement, which indicates their tenancy began on May 01, 2022;
- her son was in Hawaii in early May of 2022;
- her son put the hydro bill in his name and there is a bill showing it was in his name as of May 02, 2022;
- prior to moving into the unit, the rental unit was to be painted and a gas stove installed;
- prior to gas stove being installed they determined that the kitchen cabinets need to be altered to provide proper clearance for the gas stove, so the cabinets were replaced;
- the kitchen cabinets were installed sometime near the beginning of July of 2022;
- the delivery of the refrigerator was delayed until July 07, 2022, due to COVID related supply issues;

- the kitchen countertop was not fully installed until September of 2022;
- there was a leak in the bathroom that required additional repairs;
- the repairs associated to the leak were completed by the end of July of 2022; and
- her son was living in the unit by August 01, 2022.

The Witness for the Landlord initially stated that he moved into the rental unit on July 01, 2022. After the Tenants referenced documents submitted in evidence, the Witness stated that his initial testimony was inaccurate and that he now realizes that he moved into the unit on August 01, 2022. Additionally, he stated that:

- He is the Landlord's son;
- He was in Hawaii during the first week of May of 2022;
- He began moving clothes and personal property into the rental unit in May of 2022;
- He believes the installation of the kitchen cabinets were installed by late June of 2022;
- The leak in the bathroom was discovered while the Tenants were still living in the unit; and
- Repairs associated to the leak in the bathroom began in mid-May and were completed in mid-June.

The male Tenant stated that their refrigerator and stove were in good working order at the end of the tenancy. He acknowledged that there was a leak in the bathroom in February of 2022, which he understands was repaired on June 20, 2022.

### Analysis

On the basis of the undisputed evidence, I find that the Tenants were served with a Two Month Notice to End Tenancy, pursuant to section 49 of the *Act*, which required them to vacate the rental unit by May 01, 2022, because the Landlord's child was moving into the rental unit.

On the basis of the undisputed evidence, I find that the Two Month Notice to End Tenancy was served because the Landlord's son and girlfriend intended to move into the rental unit. After considering all of the evidence, I find that the Landlord's son began living in the rental unit on, or about, August 01, 2022, although he moved some personal items into the unit prior to that date.

I find that prior to the son/girlfriend moving into the unit, the unit was painted, kitchen appliances were installed; the kitchen cupboards were replaced; and damage from a water leak was repaired. Although the timelines for the repairs/renovations provided by the Landlord and the Witness for the Landlord differ, I find that is more likely to be an inability to recall details than an attempt to mislead. Regardless, I am satisfied that the renovations/repairs directly contributed to the delay in moving into the rental unit.

I find that the delay in moving into this rental unit was reasonable, given the renovations and repairs that were made. In my view, the Landlord's son was not required to immediately move into the rental unit and live in the unit during the renovations. Rather, I find it was reasonable and practical to wait until the repairs and renovations were complete prior to moving in. Given the nature of the repairs, the unplanned need to adjust the cabinets to accommodate a gas stove, and the unexpected complications of the repairs associated to a previous water leak and delay in appliance delivery, I find that a delay of approximately 3 months was reasonable.

I find the Tenants' submission that the refrigerator and stove were in good working order at the end of the tenancy is not relevant. A landlord has the right to upgrade a unit prior to moving into it, providing that is done in a reasonably timely manner.

Section 51(2)(a) of the *Residential Tenancy Act (Act)* stipulates that if the landlord does not establish that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I find that the Landlord's son moved into the rental unit within a reasonable time after the effective date of the Two Month Notice to End Tenancy, given the unexpected delays of the renovations/ repairs. I therefore find that the Landlord is not obligated to pay the penalty imposed by section 51(2)(a) of the *Act* and I dismiss the Application for Dispute Resolution.

### Conclusion

The Application for Dispute Resolution is dismissed, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 19, 2023

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Residential Tenancy Branch