



# 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 tenant filed under the *Residential Tenancy Act* (the “Act”) for a monetary order pursuant to section 51 of the Act, and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

### Issue to be Decided

Is the tenant entitled to compensation pursuant to section 51 of the Act?

### Background and Evidence

The tenancy began on September 1, 2017. Rent in the amount of \$1,400.00 was payable on the first of each month. A security deposit of \$700.00 was paid by the tenant. The tenant vacated on February 7, 2022.

The tenant testified that they received a Two Month Notice to End Tenancy for Landlord’s Use of Property, (the “Notice”) issued on December 21, 2021.

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

☒ All of 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.

The tenant testified that they vacated the rental unit as required by the Notice. However, they discovered the rental unit was advertised for rent in May 2022, at a significant higher amount of rent. The tenant stated this was very upsetting to them that the premises was re-rent as they wanted to stay living in the rental unit.

The purchaser testified that they took possession of the property on March 1, 2022 and the plan was to have their mother-in-law move into the suite. The purchaser stated once she was able to view the space, she decided that it would not work for her.

Filed in evidence is a letter from the mother-in-law that reads in part,

My name is Connie Loughridge mother of Sharlene Reimer and mother-in-law of Dan Reimer. When Sharlene and Dan told me last December, they were thinking about putting an offer on a new home that had a 2-bedroom suite in it, would I be interested in moving into it. My immediate response was yes as I was 74 years old, living on my own with some health concerns.

After Sharlene and Dan's offer was accepted, we were allowed to do a walk through before possession. This was the first time I was able to look at the suite and I decided that there was not enough room for all my furniture, so I decided not to move forward.

[Reproduced as written]

The purchaser testified that after that decision was made they had planned to keep the space for their own use as they have adult children and grandchildren; however, due to the increase in interest rates their mortgage costs went up by 62% and they had no option but to re-rent the unit. The purchaser stated that their broker had convinced them to have a variable rate mortgage.

The tenant responded that the purchaser's mother-in-law had more than sufficient time to view the space and determine if it was suitable before the Notice was issued. The tenant stated that they were away from December 9 to December 19, 2021, and the real estate agent had the keys to the rental unit.

## Analysis

Section 51 (2) of the Act provides:

*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*

*(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or*

*(b) **the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*** [my emphasis]

*(3) 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.*

Residential Tenancy Policy Guideline #50 Compensation for Ending a Tenancy addresses the requirements for a purchaser to pay compensation to a tenant when a purchaser ends a tenancy for landlord's use of property. The Guideline provides that a purchaser cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least six months.

With respect to extenuating circumstances, the Guideline provides the following: An arbitrator may excuse a purchaser from paying compensation if there were extenuating circumstances that stopped the purchaser from accomplishing the purpose or using the rental unit.

The Guideline provides circumstances where it would be unreasonable and unjust for a purchaser to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal but didn't notify the landlord of any further change of address or contact information after they moved out.

The Guideline provides that the following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations.

Based on all of the above, the evidence and testimony from the tenant and landlord, and on a balance of probabilities, I find as follows:

In this case, the evidence of the purchaser was that they did not use the premises for the stated purpose because of two extenuating circumstances.

The first extenuating circumstance was because their mother-in-law had intended to move into the premises; however, after she viewed the rental unit she decided that it would not work for her. I find that is not an extenuating circumstance, this is a personal choice. The purchaser could have had the mother-in-law view the premises before requesting vacant possession.

The second extenuating circumstance was because interest rates were rising, and they could not afford to keep the premises for their own use as their mortgage costs had increased by 62% and had no alternative except to rent the premises. While I accept interest rates had risen and the cost of mortgages were rising for those in variable rate mortgages; however, that is a risk of a variable rate mortgage as it does not offer stability or predictably. This was a personal choice of the purchasers not an extenuating circumstance.

I find the purchasers have failed to prove they used the premises for the reasons within the Notice and have failed to prove an extenuating circumstance occurred that

prevented them from meeting their obligations under the Act. Therefore, I find the purchasers must pay the tenant 12 times the monthly rent in the amount of **\$16,800.00**.

I grant the tenant a monetary order comprised of the above the amount and the \$100.00 cost to recover the filing fee in the total amount of **\$16,900.00**. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The purchasers are cautioned that costs of such enforcement are recoverable from the purchasers.

### Conclusion

The tenant's application for monetary compensation is granted.

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: February 16, 2023

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Residential Tenancy Branch