



# 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 Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for \$21,600.00 compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property dated November 9, 2021 ("Two Month Notice"); and to recover their \$100.00 Application filing fee.

The Tenants, the Landlord, and counsel for the Landlord S.Y. ("Counsel") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. One witness for the Landlord, D.M. ("Witness"), was also present and provided affirmed testimony.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application, the Notice of Hearing, or the documentary evidence. The Landlord said she had received these documents from the Tenants and had reviewed them prior to the hearing. The Landlord confirmed that she had not submitted any documentary evidence to the RTB or to the Tenants. At one point, Counsel referred to a case citation in his arguments; however, he acknowledged that he had not provided it to the Tenants before the hearing. As such, I advised that I could not consider this case pursuant to rules of administrative fairness.

### Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that

the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

#### Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order, and if so, in what amount?
- Are the Tenants entitled to Recovery of the \$100.00 Application filing fee?

#### Background and Evidence

The Parties agreed that the tenancy began on July 15, 2018, with a monthly rent of \$1,800.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$900.00, and a \$350.00 pet damage deposit. They agreed that the Landlord returned the Tenants' deposits to them in full at the end of the tenancy. The Parties agreed that the Tenants moved out of the rental unit on January 31, 2022.

The Two Month Notice was signed and dated November 9, 2021, it has the rental unit address, it was served by posting it on the rental unit door on November 12, 2021. The Two Month Notice had an effective vacancy date of January 15, 2022, which is automatically corrected by the Act to January 31, 2022. The Two Month Notice was served on the grounds that the rental unit would 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 Landlord testified that her daughter and son-in-law separated in approximately September 2021, and that her son-in-law lives in the rental unit now, and has for over a year, although it was the Landlord's understanding that her daughter would move into the rental unit. The Parties agreed that the Landlord's daughter never lived there for more than a couple of days, after which time the daughter and her husband agreed that it would be best if he stayed there and the daughter remained in the family home with her children as a stay-at-home Mom. The Landlord testified that the children spend 50% of their time in each home now.

The Landlord said:

The intention originally was for my daughter to move in - that is true - after the Tenants moved out. My daughter and son-in-law, who are not divorced, but are separated, asked me if she could stay at the house. [Her husband. T.] was living downstairs and things were very awkward; he moved into the bedroom downstairs [at the marital home], and she found it very stressful, and asked if she could move into [my] house. After the Tenants moved out, my daughter and T. did some cleaning. They had a talk, and they decided it would be best for the children if he stayed there. I was okay with that. I didn't mean to hurt anyone. [My daughter's] there all the time letting dogs out, dropping off kids.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 67 of the Act allows for an arbitrator to determine the amount of compensation to be awarded to a party if another party has not complied with the Act, the regulations, or a tenancy agreement.

Section 51 (2) of the Act states that a landlord must pay the tenant an amount that is equivalent to 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.

In the Two Month Notice dated November 9, 2021, the Landlord indicated that she or a close family member – her daughter - intends to occupy the rental unit. However, the Parties agreed that the daughter does not live there and did not live there for more than a few days at the start. A landlord's son-in-law is not set out as a "close family member" pursuant to section 49 of the Act.

Policy Guideline #50, "Compensation for Ending a Tenancy" ("PG #50") states the following about Extenuating Circumstances that may excuse a landlord from the consequences of section 51 of the Act. PG #50 includes:

## F. EXTENUATING CIRCUMSTANCES

The director may excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending a tenancy within a reasonable period after the tenancy ended, from using the rental unit for the stated purpose for at least 6 months, or from complying with the right of first refusal requirement.

These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. 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 did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.
- A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.

The following are probably **not** extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.
- A landlord entered into a fixed term tenancy agreement before section 51.1 came into force and they never intended, in good faith, to occupy the rental unit because they did not believe there would be financial consequences for doing so.

PG #50 specifically states that changing one's mind is not an example of extenuating circumstances that would excuse the landlord from the implications of section 51 of the

Act. However, I find in this set of circumstances that the Landlord's good faith intention was for her daughter to live in the rental unit, as a way of helping to relieve the daughter's marital problems.

I find from the evidence before me that the Landlord was not part of the decision for her son-in-law to move into the rental unit. Further, I find that there was nothing malicious or duplicitous about this eviction. Rather, I find that the Landlord was trying to help her daughter resolve the effects of the daughter's marital breakdown. I find that what occurred with the rental unit did, in fact, address this original intent. I find that it would not be in the spirit of the legislation to penalize the Landlord in this way, for essentially carrying out the purpose of the Two Month Notice – to help her daughter with a marital problem. As such, I find that the Landlord did not breach the legislation in this situation.

Accordingly, and pursuant to section 62 of the Act, I dismiss the Tenants' Application wholly without leave to reapply.

### Conclusion

The Tenants are unsuccessful in their Application, as I find that the Landlord did not fail to fulfil the general purpose set out in of the Two Month Notice. I find there were extenuating circumstances that prevented the Landlord from meeting the letter of the law in this matter; however, I find the Landlord's original intent was met. Accordingly, the Tenants' Application is dismissed wholly without leave to reapply.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 15, 2023

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Residential Tenancy Branch