



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNETC

### Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for Compensation from the landlord related to a notice to end tenancy for Landlord's use of property pursuant to section 51.

The tenant and both landlords attended the hearing. The landlords confirmed service of the tenant's Notice of Dispute Resolution Proceedings package and the tenant confirmed service of the landlord's evidence package. Neither party took issue with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

### Issue(s) to be Decided

Were there extenuating circumstances preventing the landlords from accomplishing the purposes for which they ended the tenancy?

### Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In

accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts. The rental unit is an entire single-family house. The age of the house is over 100 years old. The tenancy began on May 1, 2011 and the rent at the end of the tenancy was \$2,100.00 per month. When the tenancy ended on November 30, 2021, tenant received her security deposit and the equivalent of a month's rent for being served with a 2 Month Notice to End Tenancy for Landlord's Use. The landlords ended the tenancy with this notice and the reason for ending the tenancy was because the rental unit will be occupied by the landlord or the landlord's spouse. Since the tenancy ended, the landlord and his spouse have not occupied the rental unit.

The landlord HC gave the following testimony. He and his wife purchased the house in 2004 with the intent to retire in the city. Both landlords' parents are elderly and live in the city where the rental unit is located. HC's retirement was approaching and on September 25, 2021, they served the tenant with the notice to end tenancy, effective November 30, 2021.

Prior to ending the tenancy, the landlords met with the tenant with their contractor on September 19, 2021 to get a quote for "cosmetic" renovations to be done. The following day, the contractor provided the landlords with an estimate for the work (provided as evidence for this hearing).

After the tenant moved out, the landlord's contractor began the work around Christmas of 2021. On January 27, 2022, the contractor was issued a "stop work" order by the city when the city noticed bathtubs had been removed from the rental unit. Upon inspection, the city determined that several permits were required due to the nature of what they had planned for the house. The landlord testified they needed permits for construction, plumbing, electrical and insulation. The city inspector noticed an incomplete kitchen in the basement of the house and the landlords advised him that they intended on installing a range there. The landlord HC was planning on having his father occupy the lower unit, once it was finished. They also wanted to convert the bathtub into a shower.

The original small cosmetic renovation turned into a much more involved renovation including architectural plans being drawn, permits being sought and multiple inspections by the city. The ceilings were ripped open, new plumbing installed, new insulation for fire protection and electrical wiring. Also, it was discovered that the main support post holding the beam was sitting on a base of plywood and not the foundation of the house. Finally, the permits to do the work was approved on December 2, 2022.

The landlord testified that the original plan was to move in 2 to 3 months after the cosmetic upgrades were done, however the house has remained unoccupied because of the stop work order and the permits that do not allow for occupancy while the work is being done.

The tenant gave the following testimony. She has always made the house clean and tidy since moving in, as she had clients coming to the house. She suffered hardship due to the landlord's eviction and she had to find new housing and a place to do her business which cost her much more in rent.

The tenant was present with the landlord, the landlord's family and the contractor on September 19<sup>th</sup> when the contractor came to inspect the house. The tenant testified she told the contractor about the structural and electrical issues. There was a lot of talk about taking down the wall between the living room and kitchen. There was talk of changing walls, making bathrooms bigger and enlarging bedrooms. She could tell from the talk that there was going to be major construction done.

The tenant argues that the landlord should have served her with a 4 month notice to end the tenancy, if renovations were the reason for ending the tenancy.

### Analysis

The tenant seeks compensation pursuant to section 51(2) of the Act which reads:

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 the landlord or purchaser, as applicable, does not establish that

- (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.

Pursuant to section 51(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 applicable, from**

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
- (b) using the rental unit, except in respect of the purpose specified in section 49 (6)
- (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

**(my emphasis added)**

The landlords acknowledge that they did not occupy the rental unit for the 6 months starting November 30, 2021. In other words, they failed to accomplish the stated purpose for ending the tenancy. Based on the testimony of the landlord and the documents provided, the landlord submits that there were extenuating circumstances preventing them from occupying the rental unit.

Residential Tenancy Branch Policy Guideline PG-50 [Compensation for Ending a Tenancy] states at part F:

#### 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.

In this case, the landlord brought his contractor to the rental unit on September 19<sup>th</sup> and provided the landlord with a quote to do the “cosmetic” renovations the following day. The landlord testified that he expected to move into the rental unit after the renovations were done, in about 2 or 3 months. If this scenario were to have happened, the tenant would be entitled to the 12 months compensation. 2 to 3 months after the end date of the tenancy would not be considered a reasonable period after the effective date of the notice. Turning to PG-50,

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 31<sup>st</sup> 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.

I reviewed the contractor’s estimate provided to the landlord on September 20<sup>th</sup>. I note the contractor was going to remove a bulkhead and main partition wall in the main kitchen, as well as supply and install new beam in place of kitchen partition wall. This same contractor was going to run wire, install a new plug for the stove in a new basement Kitchen; remove existing and install new baseboard Heaters throughout; and supply and install In-floor heating throughout the entry living room/kitchen area.

I have taken into consideration the fact that the quote for the work was provided to the landlord before they served the tenant with the notice to end tenancy for landlord’s use. Based on the quote provided, I do not find it credible that both the contractor and the landlord were unaware that permits would be required to perform the scope of the work required. Removing a bulkhead in a main partition wall without a permit and installing baseboard heaters and a stove plug without a certified electrician or electrical permits is dangerous and beyond what I would reasonably expect the landlords to do in the house they intend on spending their retirement years in. Consequently, I do not find the delay in occupying the unit was due to an extenuating circumstance. Contemplating permits for the extent of work required should have been foreseen before ending the tenancy.

It appears the extent and scope of the renovations would have required vacant possession of the rental unit before they even began. The landlord ought to have sought an Order of Possession from the Residential Tenancy Branch in accordance with section **49.2** of the Act, after obtaining all necessary permits and approvals required by law. If, following a hearing, an arbitrator determined the unit must be vacant in order to perform the renovations and grants an Order of Possession, the tenant would have 4 months to vacate it. Instead, the landlord served a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49(3) which is not the correct section of the Act to end this tenancy to perform renovations.

I find that the landlords did not accomplish, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or use the rental unit for that stated purpose for at least 6 months' duration following the end of the tenancy. I also find that there were no extenuating circumstances that prevented the landlords from doing so. Consequently, the tenant is entitled to compensation under section 51(2) at the equivalent of 12 times the monthly rent payable under the tenancy agreement. As the parties agreed the rent was \$2,100.00 at the end of the tenancy, I award the tenant [ $\$2,100.00 \times 12 = \$25,200.00$ ].

### Conclusion

I award the tenant a monetary order for \$25,200.00.

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 22, 2023

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Residential Tenancy Branch