



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding INTERLINK REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNETC, FF

### Introduction

This hearing convened to deal with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for compensation from the landlords related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice) and to recover the cost of the filing fee.

The tenants, the landlord's agents, the landlord/owner, and the landlord's translator attended the hearing. The hearing process was explained, and they were given an opportunity to ask questions about the hearing process. The parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The parties confirmed receipt of the other's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matters-

The landlord's agent is a property management company representing the landlord/owner during the tenancy. The 2 Month Notice was signed by the landlord's agent, SZ, but the landlord listed on the Notice is the landlord/owner. The undisputed evidence is that the landlord's agent issued the Notice on behalf of the landlord/owner.

I find the landlord's agent, the property management company, was acting for and on behalf of the landlord/owner and are therefore not the responsible party in this dispute. I have therefore excluded the property management company from any responsibility in this matter. The landlord's agent is removed from any resulting order in this dispute.

Additionally, the evidence is that the tenants served their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) to both the property management company and the landlord/owner at the address listed on the 2 Month Notice, which is the property management company. The landlord confirmed receiving the tenants' application package when it was sent by the property management company/agent and the landlord provided documentary evidence in response. I therefore find the landlord was sufficiently served with the tenants' application.

#### Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act and recovery of the cost of the filing fee?

#### Background and Evidence

The parties confirmed that the monthly rent listed on the written tenancy agreement filed in evidence, \$3,500, had been reduced to \$3,200, which was the monthly rent at the end of the tenancy.

The tenancy began on September 1, 2019, and ended on or about July 9, 2021.

The tenants' monetary claim is \$42,000, which is the equivalent of 12 times the monthly rent payable under the tenancy agreement, or \$3,500. However, the agreed upon monthly rent was \$3,200 at the end of the tenancy and I find it appropriate to amend the tenants' claim to \$38,400 (\$3,200 x 12 months).

The tenants wrote in their application the following:

*Landlord did not occupy the property as stated on the notice, instead moved to sell the property. We were served notice to move out by July 1st 2021, and Interlink Realty listed the property for sale on August 25th 2021. Thus we seek to recover 12 months worth of rent which totals \$42,000.*

[Reproduced as written]

The Notice received from the landlord's agent was dated April 29, 2021, listing an effective move-out date of July 1, 2021.

The reason for ending the tenancy states that the rental unit will be occupied by the landlord or the landlord's spouse. A copy of the Notice was filed in evidence.

In response to the tenant's claim, the landlord proceeded first in the hearing.

The landlord confirmed that they asked the agent to issue the 2 Month Notice. The landlord testified, through their interpreter, that they intended for their spouse, son, and pregnant daughter-in-law to move into the home upon their return to Canada. The landlord said that they lived in the rental unit a few days and then moved out. The landlord confirmed that the house went on the market for sale at the end of August 2021, and the sale was closed and completed on November 1, 2021.

The landlord explained that that they found the house dirty and damaged and could not stay living there. The landlord submitted that the mold left in the rental unit made the home unsuitable for living. Due to the mold, they were worried about their health and that of their pregnant daughter-in-law and the baby.

The landlord submitted the carpet was filthy and they had cleaners to steam clean the carpet. The landlord said they were a clean freak and afraid of dirty things. The landlord submitted that their body is prone to fungal infections that cause inflammation.

The landlord submitted photos in evidence.

In response, the tenants disputed that the home was dirty when they vacated. The tenants submitted that they cleaned the house and it was in better shape than when they moved in, which is why the landlord's agent returned their security deposit at the end of the tenancy. The tenants denied they would ever leave a house dirty.

### Analysis

Under Tenancy Policy Guideline 2A, the onus is on the landlord to prove they accomplished the purpose for ending the tenancy under section 49 of the Act and that they used the rental unit for its stated purpose for at least 6 months.

The 2 Month Notice was given to the tenants listing that the landlord or landlord's spouse will occupy the rental unit.

Section 51(2) provides that if 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 if 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, the landlord must pay the tenant an amount equivalent of 12 times the monthly rent payable under the tenancy agreement.

As the undisputed evidence is that the landlord or spouse did not occupy the rental unit for 6 months after the effective date of the Notice of July 1, 2021, and the rental unit was listed for sale at the end of August 2021, and the sale was completed on November 1, 2021, I find the rental unit was not used for the stated purpose. I therefore find the landlord must pay the tenants the amount of \$38,400, the equivalent of 12 times the monthly rent at the end of the tenancy of \$3,200.

Section 51(3) of the Act authorizes me to excuse the landlord from paying the tenant the equivalent of 12 times the monthly rent if, in my opinion, extenuating circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or from 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.

Tenancy Policy Guideline 50E outlines 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.

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.

In these circumstances, I find the landlord submitted insufficient evidence to show the matters could not be anticipated or were outside the landlord's control.

The landlord asserted that the rental unit was dirty, full of mold, and unlivable. Although the landlord filed photos, I find the photos unreliable as to the state of the rental unit at the end of the tenancy. The photos were taken at close range, were undated, and were not proven to be from the rental unit at the end of the tenancy. I find the landlord submitted insufficient evidence why the home could not be cleaned to a standard acceptable to the landlord. I find that a dirty and moldy house, even if true, does not meet the requirement of extenuating circumstances. Apart from this, I gave great weight to the tenants' undisputed testimony that there were no issues with the state of the rental unit at the end of the tenancy, which led to the return of their security deposit.

For the above reasons, I therefore find the landlord submitted insufficient evidence of extenuating circumstances as contemplated by the Act and Tenancy Policy Guideline.

For the above reasons, I therefore find the tenants are entitled to monetary compensation equivalent to 12 months rent as the rental unit was not used for the stated purpose listed on the 2 Month Notice.

As a result, I grant the tenant a monetary award of \$38,400, which is the equivalent of the monthly rent of \$3,200 for 12 months.

I find merit with the tenants' application and award them recovery of their filing fee of \$100, pursuant to section 72(1) of the Act.

As a result, I grant the tenants a monetary order (Order) of **\$38,500**, the equivalent of monthly rent of \$3,200 for 12 months, or \$38,400, and the cost of the filing fee of \$100.

Should the landlord fail to pay the tenants this amount without delay, the tenants must serve the Order on the landlord for enforcement purposes by means under section 88 of the Act. The landlord is informed that costs of such enforcement are recoverable from the landlord.

### Conclusion

The tenants' application for monetary compensation for the equivalent of 12 months' rent in the amount of \$38,400 and recovery of the filing fee is granted. The tenants have been granted a monetary order for \$38,500.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 23, 2023

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Residential Tenancy Branch