



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

This hearing was reconvened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### **Preliminary Matter**

It was noted that since the original hearing the Landlord provided additional evidence to the Residential Tenancy Branch (the “RTB”). The Landlord confirms that this evidence was not provided to the Tenants. The Landlord confirms that their original evidence was also not provided to the Tenants.

The Interim Decision dated October 13, 2022 (the “Interim Decision”) sets out that at the original hearing no evidence had been provided to the Tenants although it was provided to the RTB. The Interim Decision orders the Landlord to provide this evidence to the Tenants within 7 days receipt of the Interim Decision. The Interim Decision also notes that evidence intended to be relied on at the reconvened hearing must be served to the Tenants and refers the Landlord to the RTB for evidence requirements and further questions. The Landlord raised no issues with receipt of the Tenants’ evidence.

As the Landlord failed to act as ordered in the Interim Decision and also failed to provide the further evidence to the Tenants I decline to consider any of the documentary evidence provided to the RTB by the Landlord.

Issue(s) to be Decided

Are the Tenants entitled to the compensation claimed?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy with one of the Tenants started April 1, 2020 and was later continued with the other Tenant. Rent of \$2,000.00 was payable on the first day of each month. The Landlord gave the Tenants a notice to end tenancy for landlord's use dated November 30, 2022 (the "Notice"). The Notice names the owner of the unit ("Landlord YC") as the person ending the tenancy and sets out an effective date of January 30, 2022. The reason stated on the Notice is that the landlord or the landlord's spouse will occupy the unit. The Tenants moved out of the unit on January 31, 2022. The security deposit has been dealt with.

Landlord ML states as follows: Landlord YC occupied the unit from February 2 to 6, 2022 while renovations were being done to the unit. The unit was listed for sale around February 15, 2022 and sold on March 24, 2022. Landlord YC could not remain in the unit because of medical issues.

The Tenant states as follows: They do not believe that medical issues prevented Landlord YC from occupying the unit. On November 2, 2021 the Landlord informed them that a designer would be in the unit for staging and photo purposes. Persons attended the unit to look at the property and the Tenants assumed that the Landlord intended to sell the property. On November 12, 2021 the Landlord informed the Tenants that Landlord YC would move into the unit rather than sell the unit. The Tenant

argues that the Landlord's evidence of renovations and the timing of the listing of the unit supports that the Landlord had intended to sell the property from the outset.

Landlord ML states as follows: They are the daughter of Landlord YC and they opposed the move into the unit by Landlord YC but Landlord YC insisted on the move. Landlord YC insisted that the move was needed and that Landlord YC was able to live in the unit. Landlord ML did not want their mother, Landlord YC, to move into the unit due to medical reasons and that they were ultimately been proven right as around February 6, 2022 Landlord YC was taken to emergency with an overnight stay for heart problems. Landlord YC was released with a Holter monitor and follow-up instructions. Landlord YC always had heart problems.

### Analysis

Section 51(2) of the Act provides that 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.

Section 51(3) of the Act provides that 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.

It is undisputed that the unit was not occupied by Landlord YC for at least 6 months after the effective date of the Notice. Given the Tenant's undisputed evidence of the Landlord having persons at the unit for staging prior to the service of the Notice, the evidence of the timing between the renovations and listing of the unit for sale, and as there is no supporting evidence of any medical problems preventing Landlord YC from occupying the unit, I find on a balance of probabilities that the unit was sold as planned at the outset and that no extenuating circumstances prevented Landlord YC from occupying the unit for at least 6 months. The Tenants are therefore entitled to the compensation claimed of **\$24,000.00**. As the Tenants have been successful with their claim I find that they are also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$24,100.00**.

### Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$24,100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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

Dated: February 14, 2023

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Residential Tenancy Branch