



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      MNECT

### **Introduction**

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.

While the tenants attended the hearing by way of conference call, the respondents did not. I waited until 1:41 p.m. to enable the respondents to participate in this scheduled hearing for 1:30 p.m. The tenants were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenants were clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The tenants confirmed that they understood.

The tenants provided sworn, undisputed testimony that the respondents were served with the tenants' application for dispute resolution and evidence package on June 8, 2022 by way of registered mail. The tenants provided the tracking information in their evidence package, as noted on the cover page of this decision. In accordance with sections 88, 89, and 90 of the *Act*, I find the respondents deemed served with the tenants' application and evidence for this hearing on June 13, 2022, 5 days after mailing. The respondents did not submit any written evidence for this hearing.

### **Issues(s) to be Decided**

Are the tenants entitled to a monetary award for the respondents' failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on September 1, 2020, and continued on a month-to-month basis after September 30, 2021. Monthly rent was set at \$2,250.00, payable on the first of the month. A security deposit in the amount of \$1,125.00 was collected for this tenancy, which was returned to the tenants when the tenancy ended.

The tenants moved out on January 31, 2022 after they were served with a 2 Month Notice to End Tenancy for Landlord's Use on November 24, 2021. The landlord stated on the 2 Month Notice the following reason for ending the tenancy: "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". A copy was included as part of the tenants' evidence. The home was sold to the respondents, who ended the tenancy in order to occupy the home.

The tenants filed this application for compensation as they do not believe that the purchasers or close family members of the purchasers of the property have moved in as required. The tenants testified that it appears that nobody is occupying the home.

### **Analysis**

Section 51(2) of the Act reads in part as follows:

*51(2) 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.*

*(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.*

Policy Guideline #50 states the following about “Extenuating Circumstances” in the context of compensation for ending a tenancy under section 49 of the *Act*.

*An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:*

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before 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 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*

As noted in Residential Tenancy Policy Guideline #50:

*The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.*

In this case, despite the tenants' application, the respondents have not responded by way of written evidence or sworn testimony to support that they have accomplished the purpose for ending this tenancy for the duration required, nor have they submitted evidence to support that there were extenuating circumstances that prevented them from doing so.

Accordingly, I find that the tenants are entitled to compensation equivalent to 12 times the monthly rent as required by section 51(2) of the *Act* for the respondents' noncompliance. I issue a monetary award to the tenants in the amount of \$27,000.00.

**Conclusion**

I issue a \$27,000.00 Monetary Order in favour of the tenants in compensation for the respondents' failure to comply with section 49(3) of the *Act*.

The respondents must be served with this Order as soon as possible. Should the respondents fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 02, 2023

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Residential Tenancy Branch