



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant July 19, 2022 (the “Application”). The Tenant applied:

- For compensation because the tenancy ended as a result of a Two Month Notice to End Tenancy and the Landlord has not complied with the Act or used the rental unit for the stated purpose
- For reimbursement for the filing fee

The Tenant appeared at the hearing. The Landlord appeared at the hearing with N.C. N.C. called H.C. as a witness at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence, and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Tenant entitled to compensation because the tenancy ended as a result of a Two Month Notice to End Tenancy and the Landlord has not complied with the Act or used the rental unit for the stated purpose?

2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant seeks compensation under section 51 of the *Residential Tenancy Act* (the “Act”) based on the Landlord failing to follow through with the stated purpose of a Two Month Notice to End Tenancy for Landlord’s Use of Property dated October 30, 2021 (the “Notice”).

The parties had a tenancy agreement between them. The parties agreed the Tenant moved out of the rental unit February 15, 2022.

The Notice was issued so that the child of the Landlord or Landlord’s spouse could occupy the rental unit.

N.C. testified as follows. H.C. moved into the rental unit with their family at the end of February or early March. H.C. started moving items into the unit at the end of February and started staying at the unit at the end of February. H.C.’s delay in moving into the unit was due to the condition of the unit at the end of the tenancy. The unit was left in horrible condition as shown in the photos provided. It took two weeks to clean and repair the unit. H.C. and their family still live in the unit.

H.C. testified as follows. They live at the rental unit address. They moved into the unit around February 27, 2022, and have lived there since.

The Tenant testified as follows. H.C. did not move into the rental unit within a reasonable amount of time which is shown in the Tenant’s evidence. The evidence provided by the Landlord showing H.C. lives in the rental unit is dated much later than February 2022. Nobody was living in the rental unit for months after the Tenant moved out.

In reply, N.C. said it takes time to process address changes.

The Tenant submitted videos of them knocking on the rental unit door showing nobody answering the door and showing the rental unit had been painted.

The Landlord submitted documentary evidence including a copy of H.C.’s Driver’s Licence, an Address Change form, insurance, utility bills, internet bills, bank statements,

Amazon orders, photos of packages, a letter from a person living in the basement suite of the rental unit, photos of the condition of the rental unit at the end of the tenancy and photos showing repairs done in the rental unit after the tenancy ended.

### Analysis

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the *Act* and states:

(2) Subject to subsection (3), the landlord...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...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...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.

(3) The director may excuse the landlord...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...for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

RTB Policy Guideline 50 addresses section 51 of the *Act* as well as extenuating circumstances. The onus is on the Landlord to prove they followed through with the stated purpose of the Notice within a reasonable period and for at least six months. The onus is also on the Landlord to prove extenuating circumstances.

The Landlord has submitted convincing evidence that H.C. and their family moved into the rental unit once the Tenant moved out. The documentary evidence provided by the Landlord supports that H.C. and their family lives in the unit from at least March 23, 2022. The letter from the downstairs tenant states H.C. and their family moved into the unit in March 2022. Given the documentary evidence and testimony of N.C. and H.C., I accept that H.C. and their family moved into the unit in early March 2022.

H.C. moved into the rental unit within a reasonable time after the Tenant moved out given the state the rental unit was left in as shown in the photos. I accept that the unit had to be cleaned and repaired after the Tenant moved out and before H.C. and their family could move in.

Even if I had found H.C. did not move into the rental unit within a reasonable period, I would have found extenuating circumstances existed which caused the delay. The extenuating circumstances being the state of the rental unit at the end of the tenancy which required cleaning and repairs.

The documentary evidence shows H.C. lived in the rental unit until at least September of 2022, six months after they moved in.

I acknowledge the Tenant submitted evidence to support their position; however, I do not find the Tenant's evidence convincing.

The Landlord has met their onus to prove they followed through with the stated purpose of the Notice within a reasonable period after the Tenant moved out and for at least six months.

The Application is dismissed without leave to re-apply.

### Conclusion

The Application is dismissed without leave to re-apply.

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

Dated: April 19, 2023

---

Residential Tenancy Branch