



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNECT, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for money owed or compensation for damage or loss, and the recovery of their filing fee paid for this application. The matter was set for a conference call.

Both the Tenants and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

- Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss pursuant to section 51 of the *Act*?
- Are the Tenants entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Parties agreed that this tenancy began on August 1, 2015, that rent in the amount of \$1,331.00 was to be paid by the first day of each month, and at the outset of the tenancy, the Tenants had paid a \$625.00 security deposit.

The Landlord testified that they served a Two-Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice") dated March 14, 2022. The Notice indicated that the Tenants were required to vacate the rental unit as of May 31, 2022. The reason checked off by the Landlord within the Notice was as follows:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, or child; or the parent, or child of that individual's spouse)
  - Please indicate which close family member will occupy the unit
    - The landlord or landlord's spouse

The parties agreed that the Tenants moved out of the rental unit, in accordance with the Notice as of May 31, 2022, and the Tenants agreed that the Landlord returned the security to the Tenants in accordance with the *Act*. The Tenants submitted a copy of the Notice into documentary evidence.

The Landlord testified that at the time they issued the Notice they were unsure if it would be themselves or their children that would be moving into the basement of their home, and that they had wanted to tick both the landlord and the child boxes on the Notice but that their Residential tenancy Branches online form system would only allow them to tick one box.

The Landlord testified that three of their children moved into the basement suite located in their home, after a few minor renovations, and that their children are currently residing in that unit at the time of these proceedings.

The Tenants agreed that the Landlord's children did move into the rental unit.

The Tenants testified that the Landlord evicted them in order to move their children into the basement suite, so the Landlord could take in more international students in the main house. The Tenants submitted that this was a breach of the *Act*, as the Landlord only evicted them so they could make more money.

The Landlord agreed that they have international students living with them in the main house, but that they have always had international students, even when the Tenants were in the basement.

The Landlord testified that the children had reached an age where they required their own space and should not be sharing rooms, and that is why they needed the basement back as living space for their family.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the Tenants are claiming compensation pursuant to section 51 of the *Act*, which states the following:

#### ***Tenant's compensation: section 49 notice***

***51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.***

*(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.*

*(1.2) If a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid.*

*(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 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.*

I accept the agreed-upon testimony of these parties that the Landlord's children did move into the rental unit after this tenancy ended, and that as of the date of these proceedings, the Landlord's children continue to reside in the rental unit.

During the hearing, it was noted that it had been recorded on the Notice that it would be the Landlord moving into the rental unit, not the Landlord's children. After reviewing all of the testimony and documentary evidence submitted by these parties, I find that it was the intent of this Landlord to reclaim the basement rental unit, located in their home, as personal living space for their family. The Residential Tenancy Policy Guideline 2 addresses "Reclaiming a rental unit as living space" as follows:

If a landlord has rented out a rental unit in their house under a tenancy agreement, the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room or using a carriage home or secondary suite on the residential property as a recreation room.

In this case, I find that the Landlord has reclaimed the basement rental unit as additional living space for their family. Therefore, I find the Landlord did use the rental unit for the

stated purpose on their Notice, that they have continued to use the rental unit for the required six months, and that there has not been a breach of the *Act* in this case.

Consequently, I must dismiss the Tenants' application for a monetary order for compensation under section 51 of the *Act*.

Finally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have not been successful in their application, I find that the Tenants are not entitled to recover the \$100.00 filing fee.

### Conclusion

I dismiss the Tenants claim in its entirety.

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: April 25, 2023

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Residential Tenancy Branch