



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

On June 12, 2022, the Tenants applied for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement related to a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit dated March 7, 2022 (“the Four Month Notice”).

The matter was scheduled as a teleconference hearing. The Landlord and Tenants attended the hearing. The Landlord was assisted by legal counsel.

The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. The parties were informed that recording the hearing is not permitted.

The parties confirmed that they have exchanged the documentary evidence that I have before me. 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.

### Issue to be Decided.

- Are the Tenants entitled to monetary compensation from the Landlord?

### Background and Evidence

The Landlord and Tenant testified that the tenancy began in August, 2020 as a one year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$2,950.00 was to be paid to the Landlord by the first day of each month. The Tenants moved out of the rental unit on December 10, 2021, after receiving a notice to end tenancy from the Landlord.

The Landlord issued the Tenants the Four Month Notice on October 4, 2021. The Notice cites the following reason for ending the tenancy:

*I am ending your tenancy because I am going to demolish the rental unit.*

The Four Month Notice provides an effective date of February 4, 2022. On page two of the Four Month Notice the Landlord indicates that the Landlord has obtained all permits and approvals required by law to do the work. The Landlord cites a permit number. The Landlord writes that the planned work is to demolish the current house and build a new single-family home with suite.

The Tenants accepted the Four Month Notice and moved out of the rental unit on December 10, 2021.

The Tenants are requesting compensation from the Landlord in the amount of 12 months' rent payable under the tenancy agreement because the Landlord did not accomplish the purpose of the Four Month Notice. The Tenants stated that the house is still there 13 months past the effective date of the notice.

The Landlord's counsel submitted that the Landlord took reasonable steps to follow through with the purpose of the notice but was unable to carry out the demolition.

The Landlord's counsel submitted that the Landlord had the demolition permit when the Four Month Notice was issued.

The Landlord's counsel submitted that in November 2020 the Landlord started working with his builder and in February 2021, he applied for permits. In June 2021, the Landlord notified the Tenants of his plan and a sign was put up on the property. In August 2021, the Landlord received approval from a bank for financing of 1.5 million dollars. On December 7, 2021 the bank revised their loan terms requiring more equity from the Landlord. The Landlord could not accept these new terms and the bank would not honor the initial terms. The Landlord provided exhibits J and K with regard to the bank arrangements.

The Landlords counsel submitted that starting in January 2022, the Landlord pursued other financing options with other banks and in May 2022, the Landlord put the project on hold.

In early June 2022, the Landlord put the residential property back up for rent @ \$3,400.00 per month. On July 1, 2022, the Landlord entered into a lease agreement with new tenants.

The Landlord's lawyer made the following submissions:

- the lender changed the finance terms.
- the Landlord left the rental unit empty for 6 months.
- the Landlord had to move on with his plans.
- the Landlord acted reasonably and fairly.

In reply, the Tenants submitted that the landlord's bank documents are about making an application for financing and is not actually an approval for a loan. The Landlord's documents do not provide the interest rate or term of a loan.

The Landlord acknowledged that the interest rate and term of a loan is not in the documents. The Landlord stated that he was misled by the bank and was furious with them. He stated that he was told financing was all lined up.

The Landlord replied to a question from the Tenants about other bank financing and he stated that he contacted other banks about financing over the phone and not in writing.

The Tenants questioned the Landlord whether he ever obtained a building permit or a demolition permit?

The Landlord replied that the builder he was working with told him they had a building permit. The Landlord acknowledged that he did not provide a copy of a building permit or a demolition permit. The Landlord stated that the issue of permits is relevant to the sufficiency of the Four Month Notice which was not challenged by the Tenants.

The Tenants stated that they do not dispute that the Landlord had a project; however he never had a firm commitment or contract to loan him money. The Tenants submit that the Landlord was preparing an application for financing and not an approved loan. The Tenants pointed out that the Landlord did not call the bank to attend as a witness.

The Tenants stated that the Landlord's circumstances do not amount to an extenuating circumstance as he should have had his financing lined up and he never obtained a demolition permit. The Tenants stated that the Landlord could have demolished the rental unit in February 2022.

The Landlords counsel submitted that the use of the word "application" is bank talk and the Landlord relied on the documents. He submitted that the Landlord spent \$5,000.00 on this. He stated that the Landlord did have the permits, but permits are related to a dispute of the Four Month Notice.

### Analysis

The Tenants are seeking compensation from the Landlord in the amount of \$35,400.00 which is twelve months of rent that was paid under the tenancy agreement.

After considering the testimony and evidence of the parties, I make the following findings:

A landlord may end a tenancy for a demolition of a rental unit by giving notice to end the tenancy effective on a date that must be not earlier than 4 months after the date the tenant receives the notice. Section 49(6) of the Act provides that a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to demolish the rental unit.

Section 49(8)(b) of the Act gave the Tenants the right to dispute the Notice within 30 days. The Tenants did not dispute the Four Month Notice. They accepted the notice and moved out prior to the effective date of the Four Month Notice.

Section 51(2) of the Act provides that a Landlord must pay an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the Landlord does not establish that the purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice.

There is no dispute that the Landlord did not accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice. The residential property was not demolished and the Landlord is now renting the residential property to a new tenant.

Section 51(3)(a) 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 accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy.

I take guidance from the Residential Tenancy Branch Policy Guideline # 50 Compensation for Ending a Tenancy on 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 where it would be unreasonable and unjust for a landlord to pay compensation 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.*
- *A tenant exercised their right of first refusal, but did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.*
- *A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.*

Some examples that 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.*
- *A landlord entered into a fixed term tenancy agreement before section 51.1 came into force and they never intended, in good faith, to occupy the rental unit because they did not believe there would be financial consequences for doing so.*

I do not accept the Landlord's position that his inability to secure financing to demolish the current house and build a new single-family home with a suite is an extenuating circumstance that would make it unreasonable and unjust to pay compensation to the Tenants.

I find that the Landlord was responsible to achieve the demolition of the rental unit and that he should have had an approved loan, or other financing, if funding was essential in order for him to follow through with the demolition of the home. If receiving financing was essential to the demolition, it should have been anticipated and secured by the Landlord.

I find that the Landlord did not accomplish the stated purpose for ending the tenancy and owes the Tenants \$35,400.00 which is the equivalent of 12 times the monthly rent paid under the tenancy agreement.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

I grant the Tenants a monetary order in the amount of \$35,500.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

### Conclusion

The Landlords served the Tenants with a Four Month Notice to End Tenancy for Demolition of the Rental Unit and failed to accomplish the demolition of the rental unit. The Landlord has re-rented the unit to new tenants.

I find that the Landlord does not have an extenuating circumstance that would make it unreasonable and unjust for the Landlord to pay compensation to the Tenants. The Landlord must pay the Tenants the amount of 12 months' rent payable under the tenancy agreement.

The Tenants are granted a monetary order in the amount of \$35,500.00 for the Landlord's breach of the Act, and the cost of the filing fee.

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 4, 2023