



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SINCERE REAL ESTATE SERVICES  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

MNETC, FFT

### Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied for compensation related to being served with a Two Month Notice to End Tenancy for Landlord's Use and to recover the fee for filing this Application for Dispute Resolution.

The female Tenant stated that on September 16, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch prior to these proceedings were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On February 28, 2023 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was sent to the Tenant, via registered mail, on April 11, 2023. The Tenants acknowledge receipt of this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Are the Tenants entitled to compensation, pursuant to section 51(2) of the *Act*, because steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

Background and Evidence

The Agent for the Landlord and the Tenants agree that:

- the Tenants moved into the unit in 2018;
- the most recently signed tenancy agreement was a fixed term tenancy agreement, the fixed term of which began on August 01, 2021 and ended on July 31, 2022;
- the fixed term tenancy agreement declares that the Tenants must move out of the rental unit at the end of the fixed term because it is a “1 year fixed term”;
- at the end of the tenancy the monthly rent was \$2,200.00;
- rent was due by the first day of each month;
- the Agent for the Landlord told the Tenants they would have to move at the end of the fixed term;
- the Tenants were not served with a notice to end tenancy;
- the parties subsequently signed a mutual agreement to end the tenancy, effective June 30, 2022;
- the unit was vacated by June 30, 2022; and
- the rental unit was re-rented to a third party after the unit was vacated.

The female Tenant stated that they signed the mutual agreement to end the tenancy because they believed they “had no choice”. The male Tenant stated that they signed the mutual agreement to end the tenancy, in part, because they needed their security deposit returned to them.

The Agent for the Landlord stated that the Tenants were not served with a Two Month Notice to End Tenancy for Landlord's Use of Property and, as such, the Landlord is not subject to the penalty imposed by section 51(2)(a) of the *Act*.

### Analysis

On the basis of the undisputed evidence, I find that this tenancy ended on June 30, 2022, pursuant to section 44(1)(c) of the *Residential Tenancy Act (Act)*, on the basis of the mutual agreement signed by the parties.

As the tenancy ended on June 30, 2022, I find that the tenancy did not end at the end of the fixed term of the tenancy, even though the written tenancy agreement declared that the rental unit must be vacated on July 31, 2022.

I have placed no weight on the Tenants' submission that they signed the mutual agreement to end the tenancy because they believed they "had no choice". The information provided at the top of mutual agreement to end tenancy, which was submitted in evidence, very clearly states that the tenant is not obligated to sign the form. It further declares that the form is not a notice to end tenancy and that by signing the agreement the tenant may forego compensation that may be due to the tenant if they were served with a notice to end tenancy. I find this is very clear and that the Tenants should have understood they were not required to sign the agreement.

I have placed no weight on the Tenants' submission that they signed the mutual agreement to end the tenancy, in part, because they needed their security deposit returned to them. I find that, with reasonable diligence, they could have researched their rights under the *Act* and determined the rules regarding the return of the security deposit.

On the basis of the undisputed evidence, I find that the Tenants were not served with a Two Month Notice to End Tenancy, a Four Month Notice to End Tenancy, or a Twelve Month Notice to End Tenancy.

Section 51(2) of the *Act* stipulates that if steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement. As the Tenants were not served with a notice to end tenancy pursuant to section 49 of the *Act*, I find that the Landlord cannot be subject to any penalty imposed by section 51(2)(a) of the *Act*.

Section 51.3 of the *Act* stipulates that if a tenant has given a notice under subsection (1) of section 51.2, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the previous tenancy agreement if the landlord does not comply with section 51.2 (2). This section is only applicable if the Tenant is required to vacate the unit pursuant to section 49.2 of the *Act*. [*director's orders: renovations or repairs*]. As the Tenants were not required to vacate the rental unit pursuant to section 49.2 of the *Act*, I find that the Landlord cannot be subject to any penalty imposed by section 51.3 of the *Act*.

Section 51.4(4) of the *Act* stipulates that a tenant who receives an order ending a tenancy under section 49.2 [*director's orders: renovations or repairs*] is entitled to 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 renovations or repairs have been accomplished within a reasonable period after the effective date of the order. As the Tenants were not required to vacate the rental unit pursuant to section 49.2 of the *Act*, I find that the Landlord cannot be subject to any penalty imposed by section 51.4(4) of the *Act*.

I find that the Tenants have failed to establish the merit of their Application for Dispute Resolution and I dismiss their claim to recover the filing fee.

### Conclusion

The Tenants have failed to establish that they have a right to compensation on the basis of being served with a notice to end tenancy. Their Application for Dispute Resolution is dismissed, without leave to reapply.

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: May 29, 2023

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Residential Tenancy Branch