



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing dealt with the tenants August 25, 2022 application pursuant to the *Residential Tenancy Act* (the Act) for:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2)
- An authorization to recover the filing fee for this application, under section 72

The tenants SL and AH (the Tenants) and landlord KS (the Landlord) attended the hearing. The Landlord was assisted by agent SS. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure.

### Preliminary Issues – Rental Unit Address

The rental unit address was corrected in the application.

### Issue(s) to be Decided

- Are the Tenants entitled to a monetary order in an amount equivalent to twelve times the monthly rent?
- Are the Tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and information in this decision.

Both parties agreed the tenancy started April 28, 2019 and ended March 31, 2022. Monthly rent when the tenancy ended was \$1,500 due on the first of the month. The Landlord collected and returned a security deposit and a pet damage deposit.

Both parties agreed the Landlord served a notice to end tenancy for landlord's use (the Notice). The Landlord served the Notice so they could occupy the rental unit along with their children and grandchildren. The Tenants submitted the Notice into evidence. The effective date was March 31, 2022.

Both parties agree the Landlord did not occupy the unit for 6 months. The Landlord testified they occupied the unit with their children from April 2022 until the end of June 2022. The Landlord testified that in or around April 15, 2022, they directly contacted a couple they knew were interested in the property and began negotiations (the Purchasers). The Landlord testified they sold the property to the Purchasers June 30, 2022 and the possession date was July 1, 2022.

The Landlord testified the reason they decided to sell was because the property was becoming too much to maintain and it was taking a toll on their health. They wanted to prioritize their health over maintaining the property. Further, the Landlord testified they let the Purchasers know they must use the property for personal use and could not rent it out. The Landlord pointed to a letter they submitted, where the Purchasers state they were informed by the Landlord that they must use the property for family use and that they are following that.

The Tenants are claiming compensation of \$18,000 (12 months of rent payment) because the Landlord or their children did not occupy the rental unit for six months after the effective date.

The Tenants testified that in or around 2021 the Landlord was privately showing the property to sell. The Landlord clarified that back in 2021 they were thinking of subdividing the property, so they could make less work for themselves and that was the reason for the private showings. Ultimately, subdividing the property was not possible.

### Analysis

Per section 51(2) of the Act, the Landlord has the onus to prove that they used the rental unit for the stated purpose in the Notice for at least 6 months.

Based on the undisputed testimony and the Notice, I find that the Notice was served, for the purpose that the Landlord and their family would occupy the unit. Both parties agreed the Landlord, or their family did not occupy the rental unit for at least 6 months after the effective date of the Notice. The unit was only occupied by the Landlord or their family between April 2022 – June 2022. Additionally, the Landlord contacted the Purchasers April 15, 2022 to discuss a sale and sold the property June 30, 2022.

While the Landlord did require the Purchasers to use the property for family use, this does not relieve the Landlord from their obligation to occupy for 6 months. As stated in Policy Guideline 50, another purpose cannot be substituted for the purpose set out on the notice to end tenancy. The Notice stated the purpose as landlord use of the unit and not because a purchaser intended to occupy the unit. This means the Landlord was required to occupy the unit for 6 months.

### **Extenuating Circumstances**

I will now consider if the Landlord can be excused from the requirement of occupying the rental unit for 6 months due to extenuating circumstances, pursuant to section 51(4) of the Act.

The Landlord did claim that their deteriorating health was an extenuating circumstance which caused them to sell the rental unit after they served the Notice and not occupy it for 6 months. Specifically, the Landlord mentioned that maintaining the property was becoming too much for the Landlord and SS, given where their health was at.

An extenuating circumstance is typically something that could not be anticipated or is outside a person's control. While a person cannot control their health, the evidence and testimony does support that the Landlord was aware of the effort it took to manage the property and what they were capable of. Additionally, as the Landlord testified, back in 2021 they were trying to subdivide and sell part of the property because it was becoming too much work for them. This supports that the Landlord was aware prior to serving the Notice that it may not be realistic to continue maintaining the property. I find that this does not rise to the level of an extenuating circumstance.

I find that the Landlord did not meet the burden of proof of demonstrating that they accomplished the stated purpose on the Notice for 6 months or that there were extenuating circumstances to excuse the Landlord from this requirement.

As such, per section 51(2) of the Act, the Tenants are entitled to a monetary order in the amount of 12 times the monthly rent payable. Both parties agreed the money rent was \$1,500. Thus, I award the Tenants monetary award of \$18, 000 (\$1,500 x 12 month)

### **Filing Fee**

As the Tenants were successful in this application, I find the Tenants are entitled to recover the \$100.00 filing fee.

In summary, the Tenants are entitled to:

12-month compensation	\$18,000.00
Filing Fee	\$100.00
<b>Total monetary award</b>	<b>\$18,100.00</b>

### Conclusion

I grant the Tenants a monetary order of \$18,100.00.

The Tenants are provided with this order in the above terms and the Landlord must be served with this order in accordance with the Act. Should the Landlord fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforce 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: May 18, 2023

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Residential Tenancy Branch