



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNETC

### 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 compensation related to a Notice to End Tenancy. 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. The parties agreed that they have exchanged the evidence that I have before me in these proceedings.

Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the parties who holds the onus of proof to present their case and evidence first, in this case, the Tenants have applied for compensation under section 51 of the Act, as the landlord has the burden of proving that they used the rental unit for the stated purpose on their notice to end tenancy, it is the Landlord who hold the onus of proof in these proceedings and will present their case and evidence first.

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*?

### Background and Evidence

While I have considered 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 October 15, 2018, that rent in the amount of \$2,350.00 was to be paid by the 15<sup>th</sup> day of each month, and that at the outset of the tenancy, the Tenants had paid a \$1,150.00 security deposit and a \$1,150.00 pet damage deposit.

All parties agreed that the Landlord served the Tenants a Two Month Notice to End Tenancy for the Landlord's Use of the Property on April 1, 2022. The Notice indicated that the Tenants were required to vacate the rental unit as of June 15, 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

All parties agreed that the Tenants moved out of the rental unit in accordance with the notice on June 15, 2022. The Landlord and Tenants agreed that the security and pet damage deposits were dealt with in accordance with the *Act* at the end of this tenancy. Both the Landlord and the Tenants submitted a copy of the Notice into documentary evidence.

The Tenants testified that the Landlord never moved into the rental unit and that as of the date of these proceedings, the Landlord was still not residing in the rental unit. The Tenants request that they be awarded the compensation due to them for the Landlord

The Landlord testified that they agreed that they did not move into the rental unit as they had indicated they would on the Notice they issued. The Landlord submitted that although they did not move in, they should be excused from paying the compensation as they have extenuating circumstances that prevented them from moving in.

The Landlord testified that their father was in a serious car accident on April 28, 2022, and that since that time the Landlord has been the primary caregiver for their father.

The Landlord submitted a letter from their doctor and a letter from their father's employer into documentary evidence.

The Landlord submitted that due to the time involved in caring for their father, they have not had the time to move their family into the rental unit as they originally planned. The Landlord testified that they currently live in the basement of their in-law's house with their wife and children and that after work each day they travel to their father's house to care for their father at night.

The Tenants submitted that the doctor's letter submitted into evidence does not provide sufficient detail of the level of care the Landlord's father requires. The Tenants also submitted that if the Landlord was the primary caregiver for the father and that the father's care needs were so extreme that to need the Landlord to be their primary caregiver every night, should the Landlord not be living with the father to provide the appropriate care?

The Landlord responded that they spend every night with their father but that their wife, and children, still live in his in-law's basement.

The Tenants testified that they had found out that the Landlord had submitted a building permit application to the municipal office to build a new home on the rental property. The Tenants submitted a copy of an email from the local municipal office into documentary evidence.

The Landlord agreed that they had submitted a building permit application but that they had just submitted that, stating that they think it was submitted in December 2022 but that they could not really remember. The Landlord testified that since their father's accident, they had to consider different options for the property and that they were now considering either: selling, re-building then selling, or re-building with a ramp.

The Tenants submitted that the building permit application had been submitted well before December 2022 and that the Landlord never had true intentions of moving into the rental when they issued the Notice.

### Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the agreed-upon testimony of these parties that the Landlord issued a Notice to end this tenancy for their personal use of the property, indicating their intention to personally move into the rental unit.

Before me, I have an application pursuant to section 51(2) of the *Act*. The Tenants have claimed that the Landlord never moved into the rental unit and that the Landlord had not issued the Notice in good faith. Section 51(2) of the *Act* states the following:

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

***51 (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***

***(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or***

***(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.***

In this case, the Landlord has agreed that they did not use the property for the stated purpose on their Notice. Therefore, I find that the Landlord, by their own admission, breached section 51(2) of the *Act*.

Pursuant to section 51(3) of the *Act*, a landlord found to be in breach of section 51(2) may argue extenuating circumstances and offer and reason that may excuse them from having to pay the additional compensation. Therefore, before I can render a final decision on the Tenants' claim for compensation, I must consider the Landlord's excuse. Section 51(3) of the *Act* states the following:

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

***51(3) 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***

***(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, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

The Landlord submitted that they should be excused from having to pay the additional compensation due to their father's car accident and the requirement for the Landlord to be the primary caregiver for their father after this accident.

I have carefully considered the excuse offered by the Landlord, and I find that this excuse rests upon the Landlord's ability to prove that their father's condition after their car accident requires care to the extent that the Landlord would be forced to delay their planned move.

On this point, the Landlord has submitted two pieces of evidence, a letter from their doctor and a letter from their father's employer. I have reviewed the letter from the physician and noted that this letter is from the Landlord's physician, not the Landlord's father's physician. I also noted that this physician's letter does not indicate that this physician knows or has any personal knowledge of the Landlord's father's condition. After reviewing this letter, I find it to be of little evidentiary value as the physician who wrote this letter has not offered any first-hand knowledge of the Landlord's father's physical condition or care requirements.

I have also reviewed this letter from the Landlord's father's employer, and while this letter indicates that the Landlord's father has been off work due to a car accident, this letter also makes no mention of the physical condition or care requirements of the Landlord's father.

Overall, I find that there is insufficient evidence before me to prove, to my satisfaction, that the Landlord's father requires such extensive care that it would have created extenuating circumstances sufficient enough to cause the Landlord to be unable to move into the rental unit as originally planned. Therefore, I find that the Landlord's request to be excused due to extenuating circumstances fails.

Additionally, it is too much of a coincidence to let it stand without note that the Landlord has also agreed that they submitted a building permit application to the local municipal authority, to build a new home on rental property. This leads me to question whether this Landlord had ulterior motives when they issued the Notice to end this tenancy in April 2022.

Consequently, I grant the Tenants a monetary award in the amount of \$28,200.00, consisting of the equivalent of 12 times the monthly rent payable under the tenancy agreement in compensation pursuant to section 51(2) of the Act.

### Conclusion

I find the Landlord breached section 51(2) of the Act.

I grant the Tenants a Monetary Order in the amount of \$28,200.00. The Tenants are provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced 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 8, 2023

---

Residential Tenancy Branch