



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for the landlord's failure to comply with the *Residential Tenancy Act* by using the rental unit for the stated purpose in a Notice to end the tenancy for landlord's use of property, and to recover the filing fee from the landlord for the cost of the application.

Both tenants and the landlord attended the hearing and each gave affirmed testimony. The landlord also called 1 witness, the landlord's partner, who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the rental unit was used for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property commencing within a reasonable time after the effective date of the Notice and for at least 6 months duration?

### Background and Evidence

**The landlord** testified that he was not the landlord at the time of this tenancy, but purchased the rental property in November, 2021 and completion was February 9, 2022. The landlord does not know what the amount of rent was or the amount of any

security deposit or pet damage deposit. The rental unit is an apartment in a condominium strata.

The landlord further testified that he realized there were some problems that required renovations, so he moved to another unit. The landlord moved into the rental unit after renovating in May, 2022 and still lives there. The renovations included new sinks and faucets in the kitchen, a new bathtub, replaced the shower head, a sliding door, new lighting in the whole unit, flooring, appliances and full painting. That took 2 ½ or 4 months. Renovations started right away and until May, 2022. Home Depot and other receipts have been provided as evidence for this hearing. The landlord did the work himself except for plumbing.

Before starting the renovations the landlord had to assess the market value because he purchased when the market was hot. The landlord also had to assess if it was a good decision and discovered that renovations would not increase its value. The landlord had no intention of moving in. Advertisements were placed on February 17, 2022. The landlord responded to replies saying he was looking for a long-term tenant, wanting to know that the replies were not fraudulent, and wanted to know that the price mentioned in the advertisement is acceptable for its value.

**The landlord's witness** is the landlord's partner and testified that they live together at the rental address, and has lived there since May 10, 2022.

**The first tenant** (SB) testified that the tenancy was ended by the purchaser, and not done properly. The intent was to rent as evidenced by advertisements provided for this hearing, and only when the landlord didn't get any interest for the amount of money he wanted, he changed course. The landlord did not act in good faith and did not intend to occupy the rental unit when the tenants were served with the Notice.

The tenants have provided a copy of a Two Month Notice to End Tenancy for Landlord's Use of Property. It is dated November 18, 2021 and contains an effective date of vacancy of January 31, 2022. The reason for issuing it states: All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit. Also provided is a Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession, signed by the purchaser.

The tenant also testified that they vacated the rental unit on January 31, 2022 in accordance with the Notice. Rent was \$2,650.00 per month. The tenants received the security deposit and pet damage deposit back.

The tenants loved living there and the location, and went through unneeded mental and monetary hardship and stress. They were good tenants and intended to stay long term.

**The second tenant** (MW) testified that the tenants wanted to stay long-term, followed the rules and looked after the rental unit. If the purchaser had complied with the rules, the tenants would definitely have stayed and paid the rent they had been paying.

#### SUBMISSIONS OF THE LANDLORD:

The rental unit was purchased in November and the landlord received it in February. When the landlord entered the rental unit things needed to be done so the landlord renovated. The landlord thought he would advertise to find out the market value, having found out that short-term rentals are higher than long term rentals. The landlord answered emails from people and wanted to ensure the emails weren't fraudulent. The intent was not to rent. The advertisement was posted the same day as renovations started. The landlord didn't see the rental unit prior to purchasing, but saw another unit in the building; the realtor couldn't set up a time to view it and the market was crazy. The landlord didn't want to lose the unit after seeing another.

#### SUBMISSIONS OF THE TENANTS:

The landlord's witness testified that the advertisement was posted the same day as the renovations started, but according to the receipts dated February 17, 2022, the advertisement was posted 7 days earlier, on the 10<sup>th</sup> of February. The tenants did not deny access and a realtor got a key and fob so had access. The tenants were actively willing and participating. The tenants told the realtor that they wanted to stay and the realtor was trying to find an investor.

#### Analysis

Where a tenant applies for monetary compensation for the landlord's failure to comply with the law, the onus is on the landlord to establish good faith intent, including to use the rental unit for the purpose contained in the Notice to end the tenancy within a reasonable time after the effective date of the Notice, and to use it for that purpose for no less than 6 months duration with no ulterior motive.

In this case, there is no question in my mind that the landlord would have re-rented immediately after the tenants moved out if the landlord could have re-rented for the price the landlord wanted.

I have reviewed all of the evidence, particularly the advertisement dated February 10, 2022 for \$3,500.00 per month. I accept that the landlord had not viewed the rental unit, and perhaps purchased it in haste to not risk purchasing. However, if the landlord had good faith intent at the time the rental unit was purchased, the landlord could have renovated while living there rather than attempting to raise the rent for another tenant. The rental amount in the advertisement is almost \$1,000.00 more than the tenants had been paying.

The *Residential Tenancy Act* states:

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 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.

(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.

In the circumstances, I am not satisfied that the landlord acted in good faith, and the only extenuating circumstance is that the landlord didn't get the amount of rent he hoped to after advertising. I fully believe that if the landlord could have re-rented as a result of the advertisement, the landlord would have done so. But the test is whether or not the landlord moved into the rental unit within a reasonable period after the effective date of the notice, and used the rental unit for that purpose for at least 6 months

beginning within a reasonable period after the effective date of the Notice. The effective date of the Notice is January 31, 2022. The landlord took possession on February 9, 2022 and posted the advertisement on February 10, 2022. The receipts for renovations commence on February 17, 2022. The landlord moved into the rental unit on May 10, 2022 which is about 3 ½ months after the effective date of the Notice. I accept that the landlord has resided in the rental unit for a year. I find that, considering the renovations completed by the landlord, the landlord has complied with the *Act* by moving into the rental unit within a reasonable time after the effective date of the Notice.

Therefore, the tenants' application is dismissed. Since the tenants have not been successful with the application, the tenants are not entitled to recovery of the filing fee.

### Conclusion

For the reasons set out above, the tenants' application is hereby 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 *Residential Tenancy Act*.

Dated: May 23, 2023

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Residential Tenancy Branch