



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      **MNETC FFT**

### Introduction

This hearing was convened by way of conference call in response to the Tenant's application for dispute resolution (Application) under the *Residential Tenancy Act* (Act). The Tenant seeks:

- a monetary order for compensation from the Landlords related to a 2 Month Notice to End Tenancy for Landlord's Use of Property dated April 30, 2022 (2 Month Notice) pursuant to section 51; and
- authorization to recover the filing fee for the Application from the Landlords pursuant to section 72.
- 

The two Landlords (JM and MP) and the Tenant attended this hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure*. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant stated he served the Notice of Dispute Resolution Proceeding and his evidence (NDRP Package) on each of the Landlords by registered mail on September 2, 2022. The Tenant provided the Canada Post tracking numbers for service of the NDRP Package by post to corroborate his testimony. The Landlords acknowledged receipt of the NDRP Packages. As such, I find the NDRP Packages were served on each of the Landlords in accordance with the provisions of sections 88 and 89 of the Act.

JM stated the Landlords served their evidence on the Tenant by registered mail on April 25, 2023. JM provided the Canada Post tracking number for service of the Landlords' evidence on the Tenant to corroborate his testimony. The Tenant stated he changed his

address without notifying the Landlords. The failure of the Tenant to provide his new address for service was the fault of the Tenant. As such, I find the Landlords' evidence was served on the Tenant pursuant in accordance with the provisions section 88 of the Act.

### Issues to be Decided

Is the Tenant entitled to:

- monetary compensation from the Landlords?
- recover the filing fee for the Application from the Landlords?

### Background and Evidence

While I have turned my mind to all 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 principal aspects of the Application and my findings are set out below.

JM submitted into evidence a copy of the tenancy agreement between the Landlords and Tenant. The parties agreed the tenancy commenced on March 16, 2022, on a month-to-month basis, with rent of \$1,800.00 payable on the first day of each month. The Tenant was required to pay a security deposit of \$900.00 to the Landlords. Based on the foregoing, I find there was a residential tenancy between the parties and that I have jurisdiction to hear the Application.

The Tenant submitted into evidence a copy of the 2 Month Notice. The 2 Month Notice stated the Tenant was to vacate the rental unit on June 30, 2022. JM submitted into evidence a signed and witnessed Proof of Service on Form RTB-34 certifying the 2 Month Notice was served in the Tenant's mailbox on May 1, 2022. Pursuant to section 90 of the Act, I find the 2 Month Notice was deemed to have been received by the Tenant on May 4, 2022.

The Tenant stated he vacated the rental unit on July 1, 2022. MP stated the Tenant was still in the rental unit at 7:00 pm on July 2, 2022. MP stated the Landlords moved into the rental unit on July 3, 2022. JM stated the Landlords acted in good faith when they served the 2 Month Notice on the Tenant. JM stated the Tenant always knew the Landlords planned to move back into the rental unit. JM stated the Tenant did not pay the rent for May 2022 and the Landlords served the Tenant with a Ten Day Notice to

End Tenancy for Unpaid Rent and/or Utilities dated May 2, 2022 (10 Day Notice). JM stated the Landlords made an application for dispute resolution to seek an order of possession but the Landlords abandoned the application. JM stated the Landlords placed the rental unit up for sale. JM stated the Landlords did not know the rental unit would be sold so quickly.

### Analysis

The Tenant seeks \$21,600.00 compensation pursuant to section 51(2) of the Act the basis the Landlords did not use the rental unit for the stated purpose in the 2 Month Notice.

Subsections 51(2) and 51(3) of the Act state:

- 51(2) Subject to subsection (3), the landlord...must pay the tenant...an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement *if the landlord...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...from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord...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.

[emphasis in italics added]

The effective date of the 2 Month Notice was June 30, 2022. Although there was disagreement between the parties on the date the Tenant moved out, I find the Tenant vacated the rental unit on July 2, 2022. Subsection 49(2)(a) of the Act states:

- 49(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy
  - (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
    - (i) not earlier than 2 months after the date the tenant receives the notice,
    - (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
    - (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

[...]

The Tenant was deemed to have received the 2 Month Notice on May 4, 2022. As such, section 49(2)(a) provides the earliest effective date for the Tenant to move out was July 31, 2022. Sections 53(1) and 53(3) of the Act state:

- 53(1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

[...]

- (3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) [*tenant's notice: landlord breach of material term*], 46 [*landlord's notice: non-payment of rent*] or 50 [*tenant may end tenancy early*], if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed

to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

- (a) that complies with the required notice period, or
- (b) if the landlord gives a longer notice period, that complies with that longer notice period.

Pursuant to section 53(3) of the Act, the effective date of the 2 Month Notice was deemed to be July 31, 2022. In any event, the Tenant vacated the rental unit prior to the deemed effective date of the 2 Month Notice.

Pursuant to section 51(2) of the Act, the Purchasers were required to use the rental unit for six months after the effective date of the 2 Month Notice, being July 31, 2022. MP stated the Landlords moved into the rental unit on July 3, 2022. As such, the Landlords were required by section 51(2) of the Act, to occupy the rental unit for their own exclusive use until January 3, 2023. JM stated the Landlords placed the house for sale and it sold sooner than they anticipated. MP stated the Landlords vacated the rental unit on September 2, 2023. Based on the foregoing, the Landlords did not comply with the provisions of section 51(2) of the Act because they did not occupy the rental unit for a minimum of six months.

JM stated there were extenuating circumstances that justify that I should find that the Landlords are not required to pay the Tenant compensation pursuant to section 51(2) of the Act. JM stated that Landlords acted in good faith when they served the 2 Month Notice on the Tenant. The requirement that a landlord act in good faith arises from the provisions of section 49(3) of the Act respecting a landlord giving a tenant a Two Month Notice to End Tenancy for Landlord's Own Use of Property. The issue of whether a landlord acted in good faith when a Two Month Notice to End Tenancy for Landlord's Own Use of Property is not a relevant consideration on whether there were extenuating circumstances under section 51(3) of the Act that would excuse a landlord from paying the compensation required by section 51(2) of the Act.

*Residential Tenancy Policy Guideline 50* (PG 50) addresses the requirements for a landlord to pay compensation to a tenant under the Act, including when the landlord does not fulfill their legal obligations after ending a tenancy for landlord's own use. PG 50 states in part:

### **Accomplishing the Purpose/Using the Rental Unit**

Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period *or use the rental unit for that stated purpose for at least 6 months*.

Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy. For instance, if a landlord gives a notice to end tenancy under section 49, and the stated reason on the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit for at least 6 months. A landlord cannot convert the rental unit to a non-residential use instead. Similarly, if a section 49.2 order is granted for renovations and repairs, a landlord cannot decide to forego doing the renovation and repair work and move into the unit instead.

If a section 49.2 order is granted, the renovations or repairs that are accomplished must be the renovations or repairs that required vacant possession so that there was authority to grant the section 49.2 order. A landlord cannot obtain a section 49.2 order to end a tenancy for renovations or repairs and then only perform cosmetic repairs or other minor repairs that could have been completed during the tenancy.

A landlord cannot end a tenancy for the stated purpose of occupying the rental unit, and then re-rent the rental unit, or a portion of the rental unit (see *Blouin v. Stamp*, 2011 BCSC 411), to a new tenant without occupying the rental unit for at least 6 months.

Based on PG 50, extenuating circumstances are circumstances in which the Landlord had no control over the change of use of the rental unit from the use stated in the Two Month Notice to End Tenancy for Landlord's Use of Property. In the current case, I find the Landlords made the decision, of their own free will, to sell the rental unit prior to the end of the six month period they were required to occupy the rental unit. The Landlords had the option of delaying listing the property until a later date, or alternatively, negotiating a closing for the purchase and sale that would occur after the expiry of the six month period on January 3, 2023. As such, it is my opinion there were no

extenuating circumstances that prevented the Landlords from using the rental unit for at least six months' duration, beginning on the date they moved into the rental unit. Based on the foregoing, I find the Landlords must pay the Tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement, being \$21,600.00.

As the Tenant has been successful in the Application, I order the Landlords to pay the Tenant \$100.00 for reimbursement of the filing fee for the Application pursuant to section 72 of the Act.

### Conclusion

The Tenant is granted a Monetary Order for \$21,700.00 calculated as follows:

Item	Amount
Compensation equal to 12 months' rent at \$1,800.00 per month	\$21,600.00
Reimbursement of filing fee for Application	\$100.00
<b>TOTAL</b>	<b>\$21,700.00</b>

The Tenant is provided with this Order on the above terms and the Landlords must be served with this Order as soon as possible. If the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: June 2, 2023

---

Residential Tenancy Branch