



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

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## **DECISION**

Dispute Codes      MNETC FFT

### Introduction

The Tenants seek compensation against the respondent Landlord pursuant to section 51(2) of the *Residential Tenancy Act* (the “Act”). They also seek recovery of the application fee under section 72 of the Act.

It should be noted that two of the applicant tenants listed in the application are minor children and therefore have been removed from the style of cause. Further, the attending Tenant advised that they had amended their application to remove the original landlord from their application. It is the respondent seller (the “Landlord”) who remains a party to this action.

The Tenant submitted documentary evidence consisting of a copy of the notice to end tenancy (given by the original landlord), a copy of the tenancy agreement, and a copy of a text message conversation between the Tenant and an agent for the respondent Landlord. The Landlord did not submit any documentary evidence; they advised that they were served with the Notice of Dispute Resolution document a few months ago.

### Issue

Are the Tenants entitled to compensation?

### Evidence and Analysis

In reaching this decision, I have only considered relevant and necessary oral and documentary evidence that helped resolve the issues of the dispute.

The Tenant testified under oath that the tenancy began on September 1, 2017, and ended when they moved out on April 11, 2022. Monthly rent was \$2,600.

The Tenants were served with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") on or about January 26, 2022.

Page two of the Notice was not properly completed as to why the tenancy was being ended. However, the purchaser's information was included in the "Purchaser Information" portion of the Notice. Further, a copy of a *Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession* document ("Buyers Notice") was attached to the Notice, and this document indicates that the purchaser requests that the seller issue the Notice to the tenants because "The Buyer(s) (or one or more of the spouse, children, and parents of the Buyer(s) [. . .] intend in good faith to occupy the Property."

Ten days after the Tenants vacated the rental unit, they found a rental listing for the rental unit, on Facebook, on April 21, 2022. The Tenant (K.C.) contacted the new Landlord's agent and asked about availability and rent and so forth. A copy of the text conversation was in evidence and the agent. Monthly rent was listed at \$4,000.

The Tenant testified that a friend also let him know that another family (not the purchasing Landlord's family) was residing in the property. The Tenant himself went back a few times in the following months to check for mail.

The Landlord's agent and the son did not dispute these facts. They testified under oath that the Landlord intended in good faith to move into the rental unit with their son for him to be able to attend SFU.

However, the son testified under oath that during spring break, or early March 2022, he decided to move to Ontario to attend post secondary school. He was accepted into Queen's University and ultimately moved to Ottawa a short time later. Further, he received offers from Queen's in April or May 2022, but never heard back from SFU.

It was therefore, argued the Landlord's agent, the Landlord's good faith intention to occupy the rental unit but that there ended up being a change of plans. Moreover, the change in plans did "not happen right away" but that there was some family discussion on this issue. The agent reiterated that the Notice was never given in bad faith. Rather, the family situation and plans simply changed.

This application for compensation is made under section 51(2) of the Act, which states:

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.

There does not appear to be any disagreement between the parties that the rental unit was not occupied by the Landlord or their son for a period of six months. Indeed, it was never occupied by the Landlord or their son at all after April 11, 2022.

What I must consider, then, is whether the Landlord is excused from paying compensation by virtue of subsection 51(3) of the Act. This section states that

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.

That the son ultimately accepted an offer of acceptance at Queen's University and not an offer from Simon Fraser University were not, in my respectful opinion, extenuating circumstances. That the Landlord ended the tenancy solely because of their son *possibly* attending SFU is unreasonable, and not a situation rising to the level of an extenuating circumstance. That the son would not be offered a spot at SFU is wholly within the realm of possibility.

What is more, the son testified that he received offers in "April or May." That the Landlord proceeded to list the rental unit for rent a mere ten days after the Tenants vacated the property raises significant doubt in my mind that the Landlord or their son *ever* intended to move into and occupy the property.

That the rental unit was listed for \$4,000—\$1,600 more than what the Tenants were paying—further persuades me to find that there were, ultimately, no extenuating circumstances preventing the Landlord from occupying the rental unit.

Taking into consideration all the relevant oral and documentary evidence before me, it is my finding that the Tenants have proven that they are entitled to compensation in the amount of \$31,200.00 under section 51(2) of the Act and that the Landlord is not excused from paying this amount because there are, I find, no extenuating circumstances under section 51(3) of the Act.

The Tenants are further entitled to \$100.00 in compensation to pay for the cost of their application fee, pursuant to section 72 of the Act. In total, the Tenants are awarded \$31,300.00. A monetary order (the “Order”) in this amount is issued with this Decision to the Tenants. The Tenants must serve a copy of the Order upon the Landlord by a method of service permitted under section 88 of the Act.

### Conclusion

The Tenants’ application is hereby GRANTED.

Under section 85 of the Act, a copy of this Decision and the Order may be filed and enforced in the Provincial Court. Once filed, the decision and the order have the same effect as a judgment or an order of the Provincial Court.

Dated: June 20, 2023

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Residential Tenancy Branch