



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      MNETC, FFT

### Introduction

Under section 58 of the Residential Tenancy Act (the “Act”), this hearing dealt with the tenant’s March 27, 2023, application to the Residential Tenancy Branch for:

- (i) compensation because the tenancy was ended as a result of a Two Month Notice to End Tenancy, and the landlord has not used the rental unit for the stated purpose under section 51 of the Act; and
- (ii) authorization to recover the cost of the filing fee under section 72 of the Act.

The tenants attended the hearing. No one dialled in on behalf of the landlord during the hearing, which lasted from 1:30 P.M. to 2:05 P.M. The tenants testified under oath that the tenants served a *Notice of Dispute Resolution Proceeding* on the landlord by registered mail. There is proof of tracking information submitted into evidence. It is my finding that the landlord was served with the required notice in compliance with the Act.

### Issues

- 1. Are the tenants entitled to compensation?
- 2. Are the tenants entitled to recover the cost of the filing fee?

### Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began December 1, 2018, and ended on February 7, 2023. Rent was \$2,864.00 due on the first day of the month. There is a copy of the written tenancy agreement in evidence.

The tenants submitted as evidence a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), which had an effective date of March 31, 2023. The reason stated for the Notice was because:

- 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.

The tenants affirmed that:

- the tenants vacated the rental unit on February 7, 2023.
- on March 24, 2023, the tenants found out through a former neighbour that new tenants had moved into the rental unit. The tenants submitted as evidence a text message between the tenant and a former neighbor where the former neighbour relays this information.
- on April 4, 2023, the tenants went to the rental unit to retrieve the tenants' mail. After the tenants rang the doorbell, a woman answered. The tenants asked if she was renting, and she confirmed she was renting.
- the tenants were informed by a former neighbour that the landlord confirmed with that neighbour that the landlord had run out of money for renovations, which is why the landlord rented the unit out. The tenants submitted as evidence a text message dated April 4, 2023, from the tenants' former neighbour relaying this information.

### Analysis

Section 51(2) of the Act states that, if a tenant is given a notice to end tenancy under section 49 of the Act, a landlord or purchaser if applicable, must pay the tenant an amount that is equal to 12 times the monthly rent if the rental unit is not used for that stated purpose for at least six months' duration.

In addition, according to Policy Guideline 50, the onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the Act or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f) for at least six months. If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Based on the undisputed evidence and testimony before me, and on a balance of probabilities, I find that the tenants have established the tenants' claim for compensation. The stated purpose for the Notice, which had an effective date of March 31, 2023, was because all of the conditions for the sale of the rental unit have been satisfied and the purchaser asked the landlord, in writing, to give this notice because the purchaser or a close family member intended in good faith to occupy the rental unit.

In relation to this, the tenants' evidence was that:

- on March 24, 2023, the tenants found out through a former neighbour that new tenants had moved into the rental unit. The tenants submitted as evidence a text message between the tenants and a former neighbor where the former neighbour relays this information.
- on April 4, 2023, the tenants went to the rental unit to retrieve the tenants' mail. After the tenants rang the doorbell, a woman answered. The tenants asked if she was renting, and she confirmed she was renting.
- the tenants were informed by a former neighbour that the landlord confirmed with that neighbour that the landlord had run out of money for renovations, which is why the landlord rented the unit out. The tenants submitted as evidence a text message dated April 4, 2023, from the tenants' former neighbour relaying this information.

Despite the Notice stating that the purpose for ending the tenancy was for the landlord or a close family member to occupy the rental unit, the tenants' undisputed evidence establishes that the landlord re-rented the rental unit out by March 24, 2023. As the landlord re-rented the rental unit and did not move in as stated, I find the rental unit was not used for that stated purpose for at least six months' duration.

Based on the above, I find the tenants are entitled to twelve times the monthly rent as compensation for the landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51 of the Act, in the amount of \$34,368.00.

As the tenants were successful in its application, I find that the tenants are entitled to recover the \$100.00 filing fee under section 72 of the Act. A monetary order for the amount of \$34,468.00 is attached to this Decision and must be served on the landlord.

Conclusion

The application is granted. The tenants are awarded a monetary order in the amount of \$34,468.00.

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 30, 2023

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Residential Tenancy Branch