



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNETC, FF

### Introduction

On May 18, 2023, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 51 of the *Residential Tenancy Act* (the “Act”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

Tenant R.W. attended the hearing. The Landlord attended the hearing as well, with L.T. attending as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited, and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

Service of documents was discussed and there were no issues concerning service. As such, all parties’ evidence was accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for 12 months’ compensation based on the Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”)?
- Are the Tenants entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the most current tenancy started on May 1, 2020, and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on March 1, 2023, after being served the Notice. Rent was established at \$1,900.00 per month and was due on the first day of each month. A security deposit of \$850.00 and a pet damage deposit of \$850.00 were also paid according to the partial copy of the signed tenancy agreement that was submitted as documentary evidence for consideration by the Tenants. However, the Tenant advised that it was his belief that the amounts paid for the deposits were different than what was stipulated on the agreement.

Regardless, the parties did not know when the Tenants were served with the Notice, but it was dated January 9, 2023. The reason the Landlord checked off on the Notice was because "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)." As well, the Landlord checked off the box indicating that "The landlord or the landlord's spouse" would be the persons specifically occupying the rental unit. The effective end date of the tenancy on the Notice was noted as March 31, 2023.

L.T. advised that the Notice was served because the Landlord's spouse was to move in with his elderly parents so that he could take care of them. However, she testified that the Landlord's mother-in-law fell ill and passed away on March 5, 2023. She submitted that due to their religious beliefs, the Landlord's spouse was restricted from moving into the rental unit due to a required mourning period of 100 days. She referenced the documentary evidence submitted to support this position. However, despite this, she stated that the Landlord's spouse did move into the rental unit on June 1, 2023, and has been living there since. She cited documentary evidence submitted to support the position that he has been occupying the rental unit full-time since June 1, 2023.

The Tenant advised that he observed the grass to be long in May 2023, so he commenced investigating if the Landlord or the Landlord's spouse had moved in. He did not observe anyone living there, and when he consulted his friends, who were neighbours surrounding the rental unit, they informed him that no one lived in the rental unit.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the

following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form. When reviewing this Notice, I am satisfied that it is a valid Notice.

With respect to the Tenants' claim for twelve-months' compensation owed to them as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was dated January 9, 2023, and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

**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.*

*(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 the case may be, from*

*(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or*

*(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

Regarding this situation, I also find it important to note that Policy Guideline # 50 outlines the following about extenuating circumstances: "An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal but didn't notify the landlord of any further change of address or contact information after they moved out.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations.”

When reviewing the totality of the evidence and testimony before me, I note that L.T. advised that it was the Landlord's good faith intention to have her or her spouse move into the rental unit. However, the good faith requirement ended once the Notice was accepted, and the tenancy ended. What I have to consider now is whether the Landlord followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective end date of the Notice.

As the consistent and undisputed evidence is that neither her nor her spouse did so until June 1, 2023, I must then consider her submissions with respect to extenuating circumstances. As noted above, I am satisfied that the effective end date on the Notice was March 31, 2023, and that this was the date that the Landlord or her spouse expected to move in to occupy the rental unit.

While the Landlord's submissions regarding extenuating circumstances were due to the death of her mother-in-law, I do find it reasonable to accept that this would have been a likely unforeseen circumstance. Moreover, based on the solemnly affirmed testimony before me, I accept that the Landlord's religious faith had some restrictions after the passing of a person. Furthermore, I also recognize the challenges that arise when needing to attend to an unforeseen and significant family matter such as this.

When considering all of these factors in their totality, I find that, on a balance of probabilities, the Landlord provided sufficient evidence of extenuating circumstances that prevented her spouse from moving into the rental unit within a reasonable period of time after the effective date of the Notice. I find it more likely than not that had the Landlord's mother-in-law not passed away, then the Landlord's spouse would have moved in after the effective date of the Notice. As such, I am satisfied that the Tenants are not entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*.

As the Tenants were not successful in this claim, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I dismiss the Tenants' Application for Dispute Resolution 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: July 7, 2023

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Residential Tenancy Branch