



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

On October 11, 2022, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation based on a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the "Act") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing, and both Landlords attended the hearing as well, with W.W. attending as a translator for the Landlords. 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, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of the Notice of Hearing and the parties' respective evidence packages was discussed and there were no significant issues concerning service. As such, I have accepted both parties' evidence packages and will consider them 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 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 compensation?
- 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 tenancy started on April 1, 2020, as a fixed-term tenancy of one year, and that it ended when the Tenants gave up vacant possession of the rental unit on September 10, 2022. Despite this, there is no evidence that the Tenants served the Landlords with their 10-day written notice to move early pursuant to Section 50 of the *Act*. Rent was established at \$1,500.00 per month and was due on the first day of each month. A security deposit of \$750.00 and a pet damage deposit of \$750.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

They also agreed that the Notice was served on or around August 27, 2022, and that the reason the Notice was served 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.” Despite this, the Landlords did not indicate the name of the purchaser on the Notice. The effective end of the tenancy was noted as October 31, 2022, on the Notice.

The Landlords confirmed that all of the conditions for the sale were satisfied, and that the purchaser asked them in writing to give the Notice because the purchaser intended in good faith to move into the rental unit. They advised that the property sold, and the completion date was November 1, 2022. They acknowledged that after the Tenants gave up vacant possession of the rental unit, they moved someone in for approximately a week. However, this person knew that they needed to vacate prior to November 1, 2022.

The Tenants acknowledged that the Notice was for them at the rental unit that they rented, despite the address being noted on the Notice being two different addresses. They confirmed that they only paid half of September 2022 rent, and they asked for the rest of the month's compensation owed to them pursuant to Section 51(1) of the *Act*; however, Landlord Y.C. refused to pay this at the time of the move out.

The Landlords acknowledged that they were required to pay the compensation to the Tenants.

### Analysis

Upon consideration of the testimony 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.

With respect to the Tenants' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

Regarding the Tenants' claim for one month's compensation owed to them when they were served the Notice, I find it important to note that Section 51 of the *Act* reads in part as follows:

**51** (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

*(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.*

*(1.2) If a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid.*

The consistent and undisputed testimony is that the Tenants never complied with the Act and gave their 10 days' written notice to end the tenancy early. However, it appears as if there was some sort of text agreement for the Tenants to vacate on or around September 15, 2022. As well, the consistent and undisputed evidence is that the Tenants paid half of September 2022 rent.

As clearly indicated on the Notice, the Tenants are entitled to an amount equivalent to one month's rent. As such, I am satisfied that the Landlords are responsible for the one month's compensation owed under Section 51 of the Act after the Notice had been served. As the Tenants were entitled to the one month's compensation after being served this Notice, and as the Landlords have not compensated them in this amount on or before the effective date of the Notice as required by law, I grant the Tenants a monetary award of one month's rent of **\$1,500.00**.

With respect to the Tenants' claim for 12 months' compensation, as the consistent and undisputed evidence is that all of the conditions for the sale of the rental unit had been satisfied and the purchaser had asked the Landlords, in writing, to give this Notice because the purchaser or a close family member intended in good faith to occupy the rental unit, I am satisfied that the Tenants named the wrong party for this claim. If the purchaser has not used the property for the stated purpose after the effective date of the Notice, the Tenants should have made this Application against the purchasers.

Moreover, while the Landlords permitted someone to use the rental unit after the Tenants vacated it, the twelve months' compensation claim pertains to who the landlord would have been after the effective date of the Notice. Given that the Tenants gave up vacant possession of the rental unit prior to the effective date of the Notice, I do not accept that the Landlords would be responsible for any claim for 12 months' compensation for what they did with the rental unit prior to the effective date of the Notice. As such, any claim for 12 months' compensation against the Landlords is dismissed without leave to reapply.

As a note, no findings of fact or law have been made with respect to whether the purchaser would be responsible for a future claim of 12 months' compensation if the property was not used for the stated purpose.

Pursuant to Sections 51, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Landlords to the Tenants**

Item	Amount
One month's rent compensation	\$1,500.00
Filing fee	\$100.00
<b>Total Monetary Award</b>	<b>\$1,600.00</b>

Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$1,600.00** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced 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: August 8, 2023

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Residential Tenancy Branch