



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding MGEY INVESTCO 604.1 INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      Tenants: MNETC, MNEVC, FFT  
Landlord: MNDCL, FFL

### Introduction

This hearing was convened as a result of the parties' applications under the *Residential Tenancy Act* (the "Act").

The Tenants applied for:

- compensation of \$29,940.00 due to the Landlord having ended the tenancy and not complied with the Act or used the rental unit for the stated purpose pursuant to section 51(2) of the Act;
- compensation of \$29,940.00 regarding a fixed term tenancy with a requirement to vacate the rental unit at the end of the term under section 51.1(1) of the Act; and
- authorization to recover the filing fee for the Tenants' application from the Landlord pursuant to section 72(1) of the Act.

The Landlord applied for:

- compensation of \$7,500.00 for monetary loss or other money owed pursuant to section 67 of the Act; and
- authorization to recover the filing fee for the Landlord's application from the Tenants pursuant to section 72(1) of the Act.

The Tenants and the Landlord's representative MY attended this hearing and gave affirmed testimony. The Tenants were represented by counsel JD. The Landlord was represented by counsel OM.

The parties confirmed receipt of each other's proceeding packages and evidence for dispute resolution.

### Preliminary Matter: Clarification of Tenants' Claims

The Tenants confirmed that they did not receive any notice to end tenancy under section 49 of the Act from the Landlord. Pursuant to section 62(4)(b) of the Act, I dismiss the Tenants' claim for compensation under section 51(2) of the Act without leave to re-apply.

### Issues to be Decided

1. Are the Tenants entitled to compensation under section 51.1(1) of the Act?
2. Are the Tenants entitled to recover their filing fee?
3. Is the Landlord entitled to compensation for monetary loss or other money owed?
4. Is the Landlord entitled to recover its filing fee?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the parties' applications and my findings are set out below.

This tenancy commenced on July 1, 2021 for a fixed term ending on June 30, 2022. Rent was \$2,495.00 due on the first day of each month.

Clause 1(d) of the parties' tenancy agreement states as follows:

This clause applies if the tenancy agreement is one of the following:

- sublease agreement; or
- a fixed term tenancy in circumstances prescribed in section 13.1 of the Residential Tenancy Regulation. This Regulation specifies situations where a landlord or landlord's close family member plans in good faith to occupy the rental unit.

The tenancy ends and the tenant(s) must move out of the residential unit by 1:00 pm on the day of the above ending date. The tenant(s) must not only move out of the unit, they must take all personal belongings with them, by 1:00 pm on the day of the above ending date.

The landlord may also start to list and market the residential unit up to three months before the above ending date. The tenant must not bar the landlord entry to the unit for this purpose.

On June 7, 2022, the Landlord emailed the Tenants to connect them with a representative for a move out inspection later that month. The Tenants replied the same day to inquire as to how they might extend their lease. The Tenants expressed that they had enjoyed their year in the rental unit. The Landlord responded saying that the Tenants had never let the Landlord know about their plans until “well into the final month”. The Landlord informed the Tenants that they were “far too late in the day now” and arrangements have already been made for the move out. The Landlord also noted that the “only times we did hear from you in the past year was usually a complaint”. The Tenants subsequently agreed to contact the Landlord’s representative for the move out inspection. The Tenants also wrote: “I’m sorry we are not able to stay on in this apartment, we’ve enjoyed our time here. You’re right, the times we’ve emailed previously have definitely been about problems (heating, mice, etc). I’m sorry you understood them as complaints but I’m glad we solved the mice issue and that we’ll be leaving a pest-free suite to your next tenants.”

The Tenants moved out of the rental unit on June 30, 2022. After the Tenants moved out, the rental unit was renovated and re-rented to new tenants in October 2022.

The Tenants seek compensation of 12 months’ rent under section 51.1(1) of the Act. The Tenants submit as follows:

- The parties had a fixed term tenancy with a requirement to vacate at the end of the fixed term in clause 1(d) of the tenancy agreement. The Tenants had wanted to stay but the Landlord was insistent that the tenancy was over.
- The Tenants were not told about the Landlord or a close family member intending to move into the rental unit. Although the Landlord did not give an explicit reason for ending the tenancy, the only legal way the Landlord could do so was by activating clause 1(d) of the tenancy agreement.
- The Landlord did not comply with section 13.1 of the Residential Tenancy Regulation. After the tenancy ended, neither the Landlord nor a close family member moved into the rental unit to occupy it for a period of at least 6 months. The Tenants have provided screenshots of ads showing that the rental unit was newly renovated and available for \$3,575.00 a month starting on October 1, 2022.

MY gave the following testimony:

- MY is the sole shareholder of the corporate Landlord, the owner of the building in which the rental unit is located. There were no discussions with the Tenants at any time about MY or any of MY's family members moving into the rental unit.
- When the law was changed, the Landlord's then lawyer updated the Landlord's tenancy agreement template to add clause 1(d). However, the Landlord has never relied on this clause to evict any of its tenants.
- During the tenancy, the Tenants had made regular complaints about the rental unit, with over 20 emails sent in 8 out of 12 months. In April 2022, one of the Tenants had indicated they were emotionally distressed due to a rodent infestation in the rental unit. The Tenants did not give notice to renew or convert their tenancy to a month-to-month tenancy, and given the number of complaints, it was assumed that the Tenants wanted to leave. It was a shock when the Tenants indicated that they wanted to renew the lease. However, the Landlord did not wish to renew for another year because of what had happened. The Tenants then voluntarily agreed to leave, as indicated in their email sent to the Landlord, which the Tenants had not included in their own evidence. The Landlord never told the Tenants that they could not go month-to-month or were being evicted due to a vacate clause.
- The Landlord seeks compensation in its cross-application due to the knowingly false allegations made by the Tenants.

The Landlord submits as follows:

- The Landlord is not liable to pay the Tenants compensation under section 51.1(1) of the Act. Clause 1(d) of the tenancy agreement states that it applies "if" the tenancy agreement is one of two situations. Neither of those situations were applicable in the circumstances. First, the tenancy agreement was not a sublease. Second, at no point in time was there any discussion about the Landlord, MY, or MY's family members moving into the rental unit. Furthermore, a corporate landlord cannot end a tenancy under section 13.1 of the Residential Tenancy Regulation due to its corporate status.
- The Landlord did not have a positive obligation to advise the Tenants that the tenancy could have been converted to a month-to-month tenancy. If the Tenants had sought legal advice at the end of the fixed term, the Tenants would have been informed that they had no obligation to leave. However, the Tenants confirmed in their email to the Landlord their willingness to leave. The Tenants decided to leave after putting up a protest and expressing their intention to stay. The Landlord did not need to obtain an order of possession or hire a bailiff to remove the Tenants, who left on their own initiative.

## Analysis

### *1. Are the Tenants entitled to compensation under section 51.1(1) of the Act?*

Under section 13.1(2) of the Residential Tenancy Regulation (the “Regulation”), a prescribed circumstance in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate the rental unit at the end of the term is that “the landlord is an individual who, or whose close family member, will occupy the rental unit at the end of the term”. A “close family member” means the individual’s parent, spouse or child, or the parent or child of that individual’s spouse.

According to Residential Tenancy Policy Guideline 30. Fixed Term Tenancies, the reason for including a vacate clause must be indicated on the tenancy agreement and both parties must have their initials next to this term for it to be enforceable. The tenant must move out on the date the tenancy ends, and the landlord does not need to give a notice to end tenancy.

Failure to use the rental unit in accordance with the prescribed circumstance after the tenancy ends may result the landlord being ordered to pay compensation of 12 months’ rent to the tenant under section 51.1(1) of the Act, as follows:

#### **Tenant's compensation: requirement to vacate**

51.1(1) Subject to subsection (2) of this section, if a fixed term tenancy agreement includes, in a circumstance prescribed under section 97 (2) (a.1), a requirement that the tenant vacate the rental unit at the end of the term, the landlord must pay the tenant 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 date the tenancy ended, to satisfy the prescribed circumstance, or
- (b) the rental unit is not used in a way that satisfies the prescribed circumstance for at least the period of time prescribed under section 97 (2) (a.2), beginning within a reasonable period after the date the tenancy ended.

In this case, I find clause 1(d) of the tenancy agreement indicates that its application was conditional on the tenancy agreement being either (1) a sublease agreement or (2) the prescribed circumstance under section 13.1 of the Regulation. I find neither of these situations were applicable.

I accept MY's undisputed testimony that the corporate Landlord is the owner of the rental unit. I find the Landlord does not qualify for the prescribed circumstance under section 13.1 of the Regulation due to its corporate status.

Moreover, I do not find the Landlord or its agents to have made any representations, whether in the tenancy agreement or otherwise, that the tenancy was being ended under clause 1(d) of the tenancy agreement, for the circumstance prescribed in section 13.1 of the Regulation. I do not find the parties to have initialled either of the two reasons included in clause 1(d) of the tenancy agreement. I also find it is undisputed that there were no discussions at any time about an individual landlord or that individual's close family members moving into the rental unit.

I conclude that this tenancy was not ended as a result of clause 1(d) of the tenancy agreement or in accordance with section 44(1)(b) of the Act. I find the Tenants were not obligated to vacate the rental unit at the end of the fixed term, but had vacated voluntarily in accordance with section 44(1)(d) of the Act.

Accordingly, I dismiss the Tenants' claim for compensation under section 51.1(1) of the Act without leave to re-apply.

*2. Are the Tenants entitled to recover their filing fee?*

The Tenants have not been successful in their application. I decline to order reimbursement of the Tenants' filing fee under section 72(1) of the Act.

*3. Is the Landlord entitled to compensation for monetary loss or other money owed?*

The Landlord seeks compensation of \$7,500.00 for monetary loss or other money owed as follows:

The tenants have abused the court process to paint a false narrative and malicious allegations to claim a significant monetary award. The landlord continues to suffer stress, sleeplessness, fear, anxiety and trepidation, with significant time and resources committed. In particular, the tenants have withheld key evidence to paint a malicious, false narrative to use the process for unjust wealth enrichment under false pretenses.

Section 67 of the Act states that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Although the Tenants were not successful, I do not find the Tenants' application to amount to an abuse of process. Furthermore, I do not find the Landlord to have clearly identified which section of the Act, the regulation, or the tenancy agreement was breached by the Tenants.

Accordingly, I dismiss the Landlord's claim for compensation under section 67 of the Act without leave to re-apply.

*4. Is the Landlord entitled to recover its filing fee?*

The Landlord has not been successful in its application. I decline to order reimbursement of the Landlord's filing fee under section 72(1) of the Act.

Conclusion

Both applications are dismissed in their entirety without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 22, 2023

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Residential Tenancy Branch