



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC, FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation from the landlords related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application, pursuant to section 72.

"Landlord PB" did not attend this hearing, which lasted approximately 26 minutes. Landlord SS ("landlord"), the landlords' agent, and the two tenants, female tenant ("tenant") and "male tenant," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlords' agent confirmed that she had permission to speak on behalf of the landlord, who is her husband, at this hearing. The landlord did not testify at this hearing, as the landlords' agent said that he had trouble speaking English. The landlords' agent stated that she also had permission to represent landlord PB at this hearing. The landlord and landlord PB are collectively referred to as "landlords" and "purchasers" in this decision.

At the outset of this hearing, I informed both parties that they were not permitted to record the hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules"). During the hearing, the landlords' agent and the two tenants all affirmed under oath that they would not record this hearing.

During the hearing, I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make decision. Neither party made any adjournment or accommodation requests.

### Service of Documents

The landlords' agent confirmed receipt of the tenants' application for dispute resolution and notice of hearing, by way of registered mail. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' application and notice of hearing.

The landlords' agent claimed that she did not receive the tenants' evidence package. The tenant confirmed that the evidence was sent to the landlords by way of regular mail on April 21, 2021, to the same address that was used to send the tenants' application and notice of hearing. The landlords' agent claimed that the landlord changed his address, after receipt of the application and notice of hearing from the tenants, by registered mail. She said that the tenants were not informed of the landlord's address because she was not in contact with them. Accordingly, I find that the landlords were deemed served with the tenants' evidence on April 26, 2021, five days after its regular mailing, as per sections 88 and 90 of the *Act*, as the landlords did not provide a new service address to the tenants.

The landlords' agent stated that she did not serve the landlords' evidence to the tenants. She said that the evidence was only uploaded to the RTB online website because that is what she was told to do. She said that she received the tenants' address from their registered mail envelope, but this was her first time in this process, so she did not know what to do. I informed both parties during this hearing that I could not consider the landlords' evidence at this hearing or in my decision because it was not served to the tenants, as required by Rule 3.1 of the *RTB Rules*.

The tenant confirmed receipt of the former landlords' Two Month Notice to End Tenancy for Landlord's Use of Property, dated October 25, 2019 ("2 Month Notice"). In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the former landlords' 2 Month Notice.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation under section 51(2) of the *Act*?

Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

While I have turned my mind to the tenants' documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

The tenant stated the following facts. This tenancy began with the former landlords on May 1, 2018 and ended on December 4, 2020. Monthly rent of \$1,600.00 was payable on the first day of each month. A security deposit of \$800.00 and a pet damage deposit of \$800.00 were paid by the tenants and the former landlords returned both deposits to the tenants. A written tenancy agreement was signed by the former landlords and the two tenants.

Both parties agreed to the following facts. The tenants vacated the rental unit, pursuant to the 2 Month Notice. A copy of the 2 Month Notice was provided for this hearing. The effective move-out date on the notice was December 31, 2020. The reason indicated on the 2 Month Notice was:

- *All of the conditions for 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.*

Both parties agreed to the following facts. The former landlords sold the rental unit to the landlords and the landlord asked for vacant possession to occupy the unit. The tenants provided a written copy of the buyer's notice to seller for vacant possession, dated October 26, 2020. This notice confirms that the rental unit was sold from the former landlords to the landlords, pursuant to a contract of purchase and sale, dated October 21, 2020, and that the landlords wanted vacant possession of the rental unit, effective on January 1, 2021.

The tenants seek compensation under section 51(2) of the Act for twelve months of rent compensation of \$1,600.00, totaling \$19,200.00. The tenants claimed that because the landlords as the purchasers did not use the rental unit for the purpose on the 2 Month Notice, the tenants are entitled to compensation. The landlords dispute the tenants' application.

The tenant testified regarding the following facts. She talked to the new tenants who moved into the rental unit after the tenants vacated. They signed a one-year lease. She does not have proof of the verbal conversations or a copy of the lease. The landlords advertised the rental unit for re-rental on an online social networking site on January 3, 2021. The landlords re-rented the unit to new tenants and they did not move into the unit, as required by the 2 Month Notice.

The landlords' agent testified regarding the following facts. The landlord and the landlords' agent went to the rental unit for a couple of days and had renovations done to the unit, in order for them to move in, but they were unable to do so. The landlord had a verbal job offer from an employer in the City where the rental unit is located, as of August 2020. The landlord received a written offer of employment on December 15, 2020, which was open until January 7, 2021. The job offer was revoked by the employer on January 3, 2021. The employer told the landlord that he could not hire the landlord because of the covid-19 pandemic and that he had to wait until the pandemic was over. The landlord could not pay for the mortgage on the rental unit house or move to the City, without this employment. The landlord and the landlords' agent remained in their City and did not move into the rental unit. The landlord advertised the rental unit for re-rental on January 3, 2021, on an online social networking site, and re-rented the unit as of February 15, 2021 on a six-month lease.

### Analysis

Section 51(2) of the Act establishes a provision whereby tenants are entitled to a monetary award equivalent to twelve times the monthly rent if the purchasers do not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the Act. Section 51(2) states:

*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.*

The tenants did not dispute that the former landlords sold the rental unit to the landlords and the landlords, as the purchasers, asked for vacant possession to occupy the unit. The tenants provided a written copy of the buyer's notice to seller for vacant possession, dated October 26, 2020. This notice confirms that the rental unit was sold from the former landlords to the landlords, pursuant to a contract of purchase and sale, dated October 21, 2020, and that the landlords wanted vacant possession of the rental unit, effective on January 1, 2021.

I find that the tenants vacated the rental unit on December 4, 2020, pursuant to the 2 Month Notice. It is undisputed that the landlords, as the purchasers, did not move into the rental unit after the tenants vacated and the unit remained empty until it was re-rented to new tenants as of February 15, 2021. Accordingly, I find that neither the landlords as purchasers, nor a close family member of the purchasers, moved into the rental unit after the tenants vacated on December 4, 2020, as required by the 2 Month Notice.

Section 51(3) of the *Act* states the following:

*(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.*

Residential Tenancy Policy Guideline 50 states the following, in part, with respect to extenuating circumstances:

*E. 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.*

I find that the landlords as purchasers showed extenuating circumstances prevented them from using the rental unit for the purpose in the 2 Month Notice.

I accept the affirmed testimony of the landlords' agent that the landlord renovated the rental unit in order for him to move into the unit.

I find that the landlords could not have known at the time they issued the buyer's notice to seller for vacant possession on October 26, 2020, when the tenants vacated on December 4, 2020, or when the landlords got vacant possession of the rental unit on January 1, 2021, that the covid-19 pandemic would affect the landlord's employment offer.

I accept the landlords' agent's testimony that as the covid-19 pandemic was still ongoing, the landlord's potential employer revoked their job offer, so the landlord did not have employment to move to the City and pay the mortgage for the rental unit. I accept the landlords' agent's testimony that the landlord was unable to pay the mortgage, so he had to rent the rental unit to new tenants. I do not find this simply to be that the landlord "changed his mind" but rather that the covid-19 pandemic forced the landlord to consider new circumstances. I accept the landlords' agent's evidence that the landlord

only looked for tenants after the landlord's employment offer was revoked on January 3, 2021.

Accordingly, I find that the tenants are not entitled to twelve times the monthly rent of \$1,600.00, totalling \$19,200.00, from the landlords. Therefore, the tenants' application is dismissed without leave to reapply.

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlords.

### Conclusion

The tenants' entire application is dismissed 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: May 27, 2021

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Residential Tenancy Branch