



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, MNDCT

### Introduction

This hearing dealt with a tenant's application for a Monetary Order for:

- Compensation payable where a landlord does not use the rental unit for the purpose stated on a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice"), as provided under section 51(2) of the Act; and,
- Storage costs for the tenant's possessions after the tenancy ended.

The landlord and one of the co-tenants appeared for the hearing and were affirmed. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The hearing was held over two dates and an Interim Decision was issued on January 27, 2022. The Interim Decision should be read in conjunction with this decision.

As seen in the Interim Decision, I had authorized and ordered the landlord to provide additional evidence concerning his occupancy of the rental unit. The landlord testified he sent it to the tenant on March 2, 2022. The tenant testified that it was actually received on February 27, 2022. I was satisfied the landlord complied with his obligations to serve additional evidence within the deadline I had set and I admitted the landlord's additional evidence.

### Issue(s) to be Decided

1. Are the tenants entitled to additional compensation as provided under section 51(2) of the Act because the landlord did not use the rental unit for the stated purpose?
2. Are the tenants also entitled to compensation for storage costs?

### Background and Evidence

The tenancy started on October 28, 2018 and the tenants were required to pay monthly rent of \$1300.00.

The rental unit was described as being one-half of a house and the other side was also tenanted. The landlord also had a garage/shop on the property that contained a suite that the landlord would occupy when he was in the country.

The tenants received a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") dated January 25, 2021 requiring the tenants to vacate the rental unit by April 1, 2021. The reason for ending the tenancy, as stated on the Two Month Notice, was so that the rental unit could be occupied by the landlord, landlord's spouse or landlord's close family member.

The tenant stated that when the Two Month Notice was received, the landlord was out of the country and there was no indication the landlord would not be moving into the rental unit shortly after they moved out. The tenants vacated the rental unit on April 1, 2021, placed their belongings in storage, and began living in their car.

After the tenancy ended, the tenant returned to the property to check for any mail addressed to them and they noticed the rental unit was still vacant. July 8, 2021 was the last time the tenant went to the property and on that date the tenant took a video of the property, including video footage close to the windows to show the inside of the rental unit was empty. The landlord argued that the video evidence should be "thrown out" since the tenant obtained the evidence by trespassing on the property.

The landlord submitted that he intended to return to the property with his wife when he issued the Two Month Notice but in April 2021 Covid-19 was rampant in Canada and better in the country where he and his wife were located so the landlord delayed his return. In June 2021 the cases of Covid-19 in Canada had improved and the cases in the other country were increasing. The landlord decided to return to Canada while his wife remained in the other country. The landlord landed in Canada on July 7, 2021 and upon his arrival he checked into the airport hotel while awaiting his Covid-19 test results. On July 9, 2021 the results were in and he was free to leave the hotel. The landlord testified that on July 9, 2021 he returned to the property and resided in the suite in the garage/shop for two weeks while under-going quarantine requirements and waiting for further Covid-19 test results. The landlord explained that he did not move ito

the rental unit right away since there is a shared bathroom in the house that the tenants in the other half of the house have access to. The landlord testified that in late July 2021 he was clear of his quarantine requirements and he then moved some personal possessions into the rental unit and begin to reside in the rental unit while leaving the suite in the shop/garage empty. The landlord acknowledged he had sold most of his furniture and he moved in a relatively small amount of furniture into the 1600 sq. ft. rental unit, such as a couple of chairs, a table, a bed and dishes.

The landlord confirmed that until he moved his belongings into the rental unit in late July 2021 the rental unit was vacant.

The landlord submitted that he left Canada on a flight on December 23, 2021. Initially, the landlord had testified at the first hearing that he resided at the rental unit until his flight of December 23, 2021; however, at the recovered hearing, the landlord testified that he sold the rental unit in late November 2021 or early December 2021.

The landlord provided copies of e-tickets showing the landlord's return to Canada on July 7, 2021 and the landlord's departure from Canada at 12:01 a.m. on December 21, 2021. The landlord also provided emailed statements from friends indicating they purchased and delivered groceries for the landlord while he was in quarantine starting on July 9, 2021 and the landlord was residing in the garage/shop suite until they helped him move into the rental unit on July 23, 2021.

The tenant accepted that the landlord returned to Canada on July 7, 2021 and returned to the property on July 9, 2021 to reside in the garage/shop suite since the landlord usually resided in the garage/suite during their tenancy when the landlord was in the country; however, the tenant doubted the landlord actually moved into the rental unit considering her research showed that the house was sold on October 21, 2021. The landlord confirmed the tenant was correct and that he had sold the house on October 21, 2021.

The landlord testified that when he moved into the rental unit it was not with the intention of selling the property. The landlord went on to explain that he listed the house for sale with a realtor approximately two weeks prior to October 21, 2021, not with the intention of selling the house but to "test the market". However, the landlord received a very attractive offer from a neighbour and the landlord decided to accept the offer and sell the house.

## Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

The tenancy ended pursuant to issuance of a *Two Month's Notice to End tenancy for Landlord's Use of Property* under section 49 of the Act and the reason for ending the tenancy, as stated on the 2 Month Notice, was so that the landlord or the landlord's spouse or landlord's close family member (child, parent or spouse of child or parent) could occupy the rental unit after the tenancy ended.

Section 51 of the Act provides for compensation payable to a tenant where the tenancy has ended under section 49 of the Act. The tenants are seeking compensation equivalent to 12 months of rent, which is provided for under section 51(2) of the Act.

Below, I have reproduced sections 51(2) and (3):

(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.

[My emphasis underlined>

In this case, it was undisputed that the landlord returned to the property on July 9, 2021 and proceeded to reside in the garage/shop suite for the following 14 days. It was also confirmed by the landlord that until he moved into the rental unit in late July 2021, the rental unit remained vacant after the tenancy ended. As such, I find it unnecessary to watch the tenant's video of July 8, 2021.

The landlord provided a reason for delaying his return to Canada, which was because of Covid-19 case counts and his delay in moving into the rental unit after returning to Canada, Covid-19 testing and quarantine protocols. As such, I find it is arguable that the landlord moved into the rental unit within a reasonable amount of time after the tenancy ended, if in fact the landlord did move in.

The landlord submitted some evidence, emailed statements of friends and/or neighbours, that the landlord moved into the rental unit on or about July 23, 2021. The tenant questioned the truthfulness of the landlord's evidence; however, I find it unnecessary to make such a determination as it is undeniable that the rental unit was not owner-occupied for at least six months, as required to avoid paying compensation under section 51(2).

Section 49 of the Act provides a mechanism for landlords to end a tenancy so that the owner may occupy the rental unit. This is the reason the landlord ended the subject tenancy, so that he, as the owner of the property, may occupy the rental unit. Where a tenancy is ended for owner-occupation, the minimum amount of time for owner-occupation is six months as seen in section 51(2)(b).

If I were to accept all of the landlord's evidence before me, I calculate that the rental unit was owner-occupied from July 23, 2021 until the property was sold on October 21, 2021, which is well short of the six month minimum requirement. Therefore, I find the tenants entitled to compensation under section 51(2) of the Act in the sum of \$15,600.00 [\$1300.00 x 12 months].

Section 51(3) of the Act provides that a landlord may be excused from paying the compensation payable under section 51(2) in "extenuating circumstances". The landlord did not indicate that an extenuating circumstance, other than a very attractive offer, compelled the landlord to sell the residential property. Therefore, I do not excuse the landlord from paying the additional compensation to the tenants.

As for the tenant's request to recover storage costs from the landlord, I deny their request. Compensation payable to tenants whose tenancy ends for landlord's use of property is specifically provided for and calculated in accordance with section 51 of the Act, regardless of actual losses.

In keeping with all of the above, I provide the tenants with a Monetary Order in the amount of \$15600.00 to serve upon the landlord.

### Conclusion

The tenants are provided a Monetary Order in the sum of \$15600.00 to serve and enforce upon the landlord.

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 12, 2022

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Residential Tenancy Branch