



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant February 07, 2022 (the “Application”). The Tenant applied as follows:

- For compensation because the Landlords ended the tenancy and have not complied with the Act or used the rental unit for the stated purpose
- To recover the filing fee

The Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlords. I explained the hearing process to the Tenant. I told the Tenant they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant provided affirmed testimony.

The Tenant submitted a copy of the tenancy agreement as evidence. The Landlords did not submit evidence. I addressed service of the hearing package.

The Tenant testified that the hearing package was sent to the Landlords by registered mail to the address the Tenant previously sent rent cheques to. The Tenant testified that they sent the package within three days of February 15, 2022. The Tenant did not submit documentary evidence of service.

Based on the undisputed testimony of the Tenant, I find the Landlords were served with the hearing package in accordance with section 89(1)(c) of the *Residential Tenancy Act* (the “Act”). I accept that the Tenant sent the package by February 18, 2022. Pursuant to section 90(a) of the *Act*, the Landlords are deemed to have received the package

February 23, 2022. I find the Tenant complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Landlords. The Tenant was given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Tenant entitled to compensation because the Landlords ended the tenancy and have not complied with the Act or used the rental unit for the stated purpose?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

The Tenant sought \$21,600.00 for the Landlords failing to follow through with the vacate clause included in the tenancy agreement.

The Tenant submitted a written tenancy agreement. The agreement is between the Tenant and Landlord X.Y.Z. The Tenant testified that Landlord B.Z. is Landlord X.Y.Z.'s husband and acted as agent for Landlord X.Y.Z. during the tenancy. The agreement started November 02, 2020, and was for a fixed term ending November 01, 2021. The agreement has a vacate clause stating the Tenant must vacate at the end of the fixed term because the Landlord or Landlord's family is moving into the rental unit. Rent was \$1,800.00 per month.

The Application states the tenancy ended November 01, 2021.

The Tenant did not submit a Two Month Notice for Landlord's Use of Property ("Two Month Notice") and did not mention being served a Two Month Notice. I understood the Tenant to be seeking compensation because the Landlords did not move into the rental unit as stated in the vacate clause.

The Tenant testified that they attended the rental unit in December of 2021 or January of 2022, after they moved out, and new tenants were living in the rental unit. The

Tenant testified that the new tenants were not related to the Landlords. The Tenant testified that the Landlords are not living at the rental unit as stated in the vacate clause.

As stated, the only evidence submitted by the Tenant is the tenancy agreement.

### Analysis

There are two sections of the *Act* that deal with compensation for a landlord failing to follow through with their stated intentions for ending a tenancy, sections 51 and 51.1 of the *Act*.

Section 51 of the *Act* applies when a landlord issued the tenant a notice to end tenancy pursuant to section 49 of the *Act*. Here, the Tenant was not issued a notice to end tenancy pursuant to section 49 of the *Act* and therefore section 51 of the *Act* does not apply.

Section 51.1 of the *Act* states:

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.

(2) The director may excuse the landlord from paying the tenant the amount required under subsection (1) if, in the director's opinion, extenuating circumstances prevented the landlord from

- (a) satisfying, within a reasonable period after the date the tenancy ended, the prescribed circumstance, or

- (b) using the rental unit 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.

RTB Policy Guideline 50 addresses compensation for ending a tenancy and states at page five:

#### Transition

**Section 51.1 was brought into force** by Regulation on **July 11, 2022**. In general, a law does not apply to previous circumstances unless required by the legislation. However, amendments can apply to ongoing circumstances.

**Section 51.1 can apply** in circumstances where a fixed term tenancy agreement was entered into before section 51.1 was brought into force, but **the fixed term tenancy agreement has not yet ended**. The director may consider the change to the legislation during the period of the fixed term tenancy agreement when assessing whether there are extenuating circumstances to excuse a landlord.

**Section 51.1 would not apply in circumstances where the fixed term tenancy agreement already ended**. However, in circumstances where section 51.1 does not apply because the fixed term tenancy agreement already ended, it may still be possible for a tenant to bring an application against a landlord seeking compensation for damage or loss if the landlord or their close family member failed to occupy the rental unit at the end of the fixed term tenancy.

Pursuant to the above, section 51.1 of the *Act* only applies to fixed term tenancies ending after July 11, 2022, when the section came into force. Here, the tenancy ended November 21, 2021, and therefore section 51.1 of the *Act* does not apply. The Tenant is therefore not entitled to compensation pursuant to section 51.1 of the *Act*.

I acknowledge that the above states that a tenant may be able to apply for compensation for damage or loss; however, the Tenant did not claim for damage or loss and did not provide documentary evidence or testimony about damage or loss.

Given the above, I do not find that the Tenant is entitled to compensation for the Landlords failing to move into the rental unit as stated in the vacate clause.

Given the Tenant has not been successful in the Application, I decline to award them reimbursement for the \$100.00 filing fee.

The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed 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 29, 2022

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Residential Tenancy Branch