



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNECT FFT

### **Introduction**

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

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

All parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. All parties confirmed that they understood.

The landlord confirmed receipt of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenants' application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

### **Issues(s) to be Decided**

Are the tenants entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

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

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on February 15, 2019, and ended on or before November 30, 2021. Monthly rent was set at \$1,600.00, payable on the first of the month. A security deposit of \$800.00 was collected for this tenancy.

On September 26, 2021, the tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use in order for the landlord's parents to move in after they had sold their house. The effective date of the 2 Month Notice was December 1, 2021.

The tenants filed this application for compensation as they feel that the landlord's parents failed to fulfill their obligations to occupy the rental unit, and sold the rental unit instead.

The landlord testified that their parents did in fact move in as soon as possible, but do not dispute that the home was listed on March 8, 2022, and sold about a week later. The landlord's parents moved out on May 12, 2022. The landlord testified that this decision was due to unforeseen and extenuating circumstances that prevented their parents from occupying the home for at least six months as required under the *Act*.

The landlord testified that the family had decided it was best to sell the rental unit due to a combination of reasons. The landlord testified that their father suffered from depression, which is worse in poor weather. The landlord testified that their father was 75 years old, and suffered a decline in health. The landlord submitted a letter written by their mother who described the events that took place, and explained why the rental unit was sold. The landlord's parents had downsized from a house with a yard, and had moved from a community where they had a large circle of friends and support. The landlord's mother described the "drastic change" as "very difficult to acclimate to", and confirmed that they had decided to move sooner than planned, and back to a house in the interior region.

### **Analysis**

Section 51(2) of the *Act* reads in part as follows:

*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.*

*(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.*

Policy Guideline #50 states the following about “Extenuating Circumstances” in the context of compensation for ending a tenancy under section 49 of the Act.

*The director may excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending a tenancy within a reasonable period after the tenancy ended, from using the rental unit for the stated purpose for at least 6 months, or from complying with the right of first refusal requirement.*

*These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. Some examples are:*

- *A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after 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 did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.*
- *A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.*

*The following are probably not extenuating circumstances:*

- *A landlord ends a tenancy to occupy the rental unit and then changes their mind.*
- *A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.*
- *A landlord entered into a fixed term tenancy agreement before section 51.1 came into force and they never intended, in good faith, to occupy the rental unit because they did not believe there would be financial consequences for doing so.*

I have considered the testimony and evidence of both parties, and I find that it was undisputed that the rental unit was listed and sold in March 2022. The parents of the landlord moved out on May 12, 2022. In consideration of Policy Guideline #50 and the definition of “extenuating circumstances”, I find that the reasons provided by the landlord fail to meet the criteria for “extenuating circumstances”.

Although I am sympathetic towards the fact that the move was required to ensure better health and happiness for the landlord’s parents, I am not satisfied that the circumstances that took place that led to the change of plans meet the definition of “extenuating circumstances” for the purposes of the fulfilling one’s obligations when ending a tenancy under section 49 of the *Act*.

Although I accept that their father’s decline in health may not have been expected, I find that the family was aware of the fact that the landlord’s 75 year old father suffered from depression, a condition that could be affected by various factors including poor weather and drastic change. I find that the landlord should have been aware of the weather conditions in the area, and of how a move from a house to a smaller rental unit with no yard, in a different city with less or different social and community connections, was a change that that could negatively affect the health and happiness of the landlord’s parents. Although these factors and changes could and would affect each person differently, I am not convinced that the events that took place were so serious,

significant, or unforeseeable that they prevented the landlord's parents from being able to occupy the home for the entire six months. Although the landlord referenced a decline in health, the landlord did not provide sufficient evidence to support what specific health or medical issues made it impossible for their parents to reside there for the entire duration required under the legislation.

Although I believe that the landlord's parents did have the genuine intention of moving into, and occupying the home, for longer than five months, I find that that they had changed their minds after realizing how the move was more difficult than originally anticipated. I do not find the reasons provided in the evidence and at the hearing amount to an "extenuating circumstance", and therefore I find that the tenants are entitled to compensation equivalent to 12 times the monthly rent as required by section 51(2) of the *Act* for the landlord's noncompliance.

As the tenants were successful in their claim, I allow them to recover the filing fee.

### **Conclusion**

I issue a \$19,300.00 Monetary Order in favour of the tenants for compensation under section 51(2) of the *Act*, and for recovery of the filing fee.

The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: November 16, 2022

---

Residential Tenancy Branch