



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDCT, MNETC

### Introduction

This hearing was reconvened from a hearing on February 9, 2023 regarding the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- compensation of \$1,550.00 for the Tenants' monetary loss or money owed by the Landlord pursuant to section 67; and
- compensation in the amount of \$18,000.00 due to the Landlord having ended the tenancy and not complied with the Act or used the rental unit/site for the stated purpose pursuant to section 51.

An interim decision dated February 10, 2023 (the "Interim Decision") was issued following the original hearing. This decision should be read together with the Interim Decision.

One of the Tenants, ME, attended this reconvened hearing and gave affirmed testimony. JL of Jacken Homes attended this reconvened hearing and gave affirmed testimony. The Landlord JH, who was added to this proceeding by way of the Interim Decision, did not attend this reconvened hearing.

### Preliminary Matter – Service of Dispute Resolution Documents

ME testified that she served JH in person on February 24, 2023 with the Tenants' dispute resolution documents, including notice of this reconvened hearing, as required by the Interim Decision. The Tenants submitted a note acknowledging receipt dated February 24, 2023 and signed by JH.

According to ME, JH denied the claims in the Tenants' application and stated that he would be abroad at the time of the reconvened hearing. However, I note JH did not

appoint an agent to attend on his behalf or contact the Residential Tenancy Branch to seek an adjournment of this reconvened hearing.

ME acknowledged the Tenants' receipt of documentary evidence submitted by Jacken Homes. JL testified that copies of Jacken Homes' evidence was also sent to the JH through Jacken Homes' lawyer.

Based on ME and JL's testimony under oath, I find JH was sufficiently served with notice of this reconvened hearing and the parties' documentary evidence by February 27, 2023, pursuant to section 71(2)(b) of the Act. Having found JH to be sufficiently served, I directed this hearing to proceed in JH's absence.

#### Preliminary Matter – Removal of Respondent Jacken Homes

Jacken Homes submitted a title search of the rental property dated February 23, 2023 (the "Title Search") into evidence. The Title Search indicates that Garden City CWL Investments Inc. ("Garden City") is the owner of the property and has owned the property since October 2016. Based on the Title Search and the parties' testimonies as noted in the Interim Decision, I am satisfied on a balance of probabilities that Jacken Homes was not an owner of the rental property during the tenancy. I further find there is insufficient evidence to prove that Jacken Homes had acted an agent of the owner with respect to the tenancy, had permitted occupation of the rental unit, or had exercised powers or duties under the Act or the Tenants' tenancy agreement. I accept JL's testimony that JH was not an employee or authorized representative of Jacken Homes. I conclude there is insufficient evidence that Jacken Homes meets the definition of a "landlord" under section 1 of the Act. Pursuant to section 64(3)(c) of the Act, I have removed Jacken Homes as a landlord and respondent in this application.

#### Issues to be Decided

1. Are the Tenants entitled to compensation of \$1,550.00 for monetary loss or money owed?
2. Are the Tenants entitled to compensation in the amount of \$18,000.00 due to JH having ended the tenancy and not complied with the Act?

### 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 this application and my findings are set out below.

According to JL, JH had leased the rental property from the owner, Garden City, since in or around 2017. JL testified that JH was later evicted in May 2022 for unpaid rent.

The Tenants rented the basement portion of the rental property from JH on a month-to-month basis commencing on January 26, 2019. The Tenants were under the impression that JH was the property manager and an employee of Jacken Homes.

Tenants submitted a tenancy agreement dated January 26, 2019 between JH as landlord and the Tenants as tenants into evidence. The copy submitted is signed by JH only.

ME testified that in March 2022, the Tenants were asked to vacate the rental unit and were not given enough time to legally vacate. The Tenants submitted a letter from the JH dated March 12, 2022 (the "Letter"), which states as follows (names redacted for privacy):

Hello [Tenants],

Your lease will expire by the end of April 2022. The house owner wants me to let you know that they will not renew the lease with you. The house will go through redevelopment process. This means they will not rent the place to you anymore. You need to move out by April 30th 2022. Thank you.

The Tenants also submitted their text message correspondence with JH into evidence. This correspondence confirms that the move-out date was later extended to May 15, 2022. At the time the tenancy ended, the Tenants paid rent of \$1,550.00 per month to JH.

ME testified that it was hard for the Tenants to find a new place due to insufficient time and lack of available rentals. ME explained that the Tenants needed to stay in the same city to access special services required by the Tenants' children. ME testified that the Tenants ended up moving into a place that was out of their budget.

According to the Tenant's application, the Tenants were not given "the proper notice to vacate the property" and were not given their "one months compensation".

The Tenants' application also indicates that the Tenants were asked to vacate due to "redevelopment", but there have been no redevelopment applications with respect to the property. The Tenants submitted a photo of the rental property into evidence.

ME testified that the Tenants were told by the upstairs tenants that they were being evicted as well, but the Tenants later found out that the upstairs tenants were in fact not leaving. ME described the situation as "unfair". According to JL, those tenants had approached Garden City's property manager CL to rent the entire property from Garden City. The rental property has not undergone redevelopment after the Tenants moved out.

### Analysis

*1. Are the Tenants entitled to compensation of \$1,550.00 for monetary loss or money owed?*

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.

Based on the Tenants' claim as described in their application, I infer that the Tenants are seeking compensation of one month's rent under section 51(1) of the Act. I understand it is the Tenants' position that JH breached this section by not compensating the Tenants with one month's rent.

According to section 51(1) of the Act, a tenant who receives a notice to end tenancy under section 49 for landlord's use of property is entitled to receive one month's rent payable under the tenancy agreement from the landlord on or before the effective date of the notice.

Under section 49(6) of the Act, a landlord may end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to:

- demolish the rental unit
- convert the property to strata lots

- convert the property into a not-for-profit housing cooperative
- convert the rental unit for use by a caretaker, manager or superintendent of the property
- convert the rental unit to a non-residential use

Section 49(2)(b) of the Act requires that the effective date of a notice to end tenancy for any of the above reasons to be not earlier than four months after the date the tenant receives the notice.

Furthermore, in order to be effective, the four month notice to end tenancy must, among other requirements, be given in writing, be signed and dated by the landlord giving the notice, state the grounds for ending the tenancy, state the effective date of the notice, and be in the approved Residential Tenancy Branch form (see sections 49(7) and 52 of the Act).

The Tenants refer to the Letter from JH as the “eviction notice” that they received. I have reviewed the Letter and find that it does not comply with the form and content requirements of section 52 of the Act. I find the Letter is not in the approved Residential Tenancy Branch form (Four Months’ Notice to End Tenancy For Demolition or Conversion of a Rental Unit #RTB-29). I find it is unclear whether the “redevelopment” referred to in the Letter falls under one of the acceptable reasons for a landlord to end a tenancy under section 49(6) of the Act, as described above. I note the Act does not allow a landlord to decline renewal of a fixed-term tenancy for “redevelopment”, and in any event I do not find there to be evidence suggesting that this tenancy was in fact expiring on April 30, 2022. I note there is no evidence of any permits or approvals obtained in relation to the redevelopment claimed in the Letter.

Based on the foregoing, I find the Letter was not a valid or effective notice to end tenancy under section 49 of the Act. In my view, the Tenants did not need to vacate the rental unit and JH could not have obtained an order of possession on the basis of this Letter.

I accept the Tenants have already relied on the Letter to their detriment. I find it is important to emphasize the need for parties to understand their rights and obligations under the Act. Parties may contact the Residential Tenancy Branch for information if they have any questions regarding their tenancy.

For the purpose of the statutory compensation under section 51(1) of the Act, I find the Tenants did not receive a notice to end tenancy under section 49 of the Act. As such, I find the Tenants are not entitled to compensation of one month's rent under section 51(1) of the Act in the circumstances. The Tenant's claim under this part is dismissed without leave to re-apply.

*2. Are the Tenants entitled to compensation in the amount of \$18,000.00 due to the Landlord having ended the tenancy and not complied with the Act?*

According to section 51(2) of the Act, a landlord who issues a section 49 notice to end tenancy must pay a tenant 12 times the monthly rent payable under the tenancy agreement, if the landlord does not establish that:

- the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- the rental unit has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable time after the effective date of the notice.

In this case, I have found the Tenants did not receive a notice to end tenancy under section 49 of the Act. Accordingly, I do not find the provisions of section 51(2) to be applicable in the circumstances either. The Tenants' claim under this part is dismissed without leave to re-apply.

### Conclusion

The Tenants' application is dismissed in its 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 *Residential Tenancy Act*.

Dated: April 26, 2023

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Residential Tenancy Branch