



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing occurred by conference call based on an Application for Dispute Resolution filed by the Tenants July 27, 2022 (the “Application”). The Tenants applied:

- For compensation because the tenancy ended as a result of a Two Month Notice to End Tenancy, and the Landlord has not complied with the Act or used the rental unit for the stated purpose
- To recover the filing fee

The Tenants appeared at the hearing. The Landlord appeared at the hearing with T.G.

Both parties provided evidence for the hearing. I confirmed service of the hearing package and evidence, and there were no service issues.

The parties were given an opportunity to provide relevant evidence and submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

I note that the Tenants provided late evidence after the hearing which I have not considered because it had to be provided and served at least 14 days prior to the hearing under rule 3.14 of the Rules of Procedure.

### Issues to be Decided

1. Are the Tenants entitled to compensation because the tenancy ended as a result of a Two Month Notice to End Tenancy, and the Landlord has not complied with the Act or used the rental unit for the stated purpose?
2. Are the Tenants entitled to recover the filing fee?

### Background and Evidence

The Tenants seek \$26,220.00 in compensation under section 51 of the *Residential Tenancy Act* (the “Act”) based on the Landlord failing to follow through with the stated purpose of a Two Month Notice to End Tenancy for Landlord’s Use of Property dated May 17, 2021 (the “Notice”).

A written tenancy agreement was provided, and the parties agreed it is accurate.

The parties agreed the Tenants moved out of the rental unit July 31, 2021.

The Notice was provided. The effective date of the Notice was July 31, 2021. The grounds for the Notice were that the rental unit would be occupied by the child of the Landlord or Landlord’s spouse.

The parties agreed the Notice was served on the Tenants May 17, 2021.

The Landlord said they were the property manager for the rental unit and the owner was D.A. The Landlord said they gave the rental unit back to D.A. at the end of this tenancy. The Landlord said D.A. let their three children move into the rental unit.

The Tenants acknowledged they knew the Landlord was the property manager of the rental unit and that D.A.’s children were going to move into the rental unit when the Notice was issued.

The Landlord said D.A.’s three children did move into the rental unit after the tenancy ended. The Landlord said two of the children did not want to live there anymore after a few months. The Landlord said one of the children, J, wanted to stay in the rental unit. The Landlord said the rental unit was too big for one person so D.A. advertised it for rent in February and got a new tenant to share the rental unit with J. The Landlord said J still lives in the rental unit. The Landlord referred to a letter from D.A.’s three children in evidence.

The Landlord further testified as follows. The house was in poor condition when the Tenants moved out. D.A.’s children lived in the house while renovations were done. Two of D.A.’s children wanted their own kitchen so D.A. put a kitchen in the basement of the house. Only the upper part of the house was advertised for rent because J lives in the lower part of the house.

The Tenants testified as follows. The rental unit was completely renovated after the Tenants moved out and they do not believe D.A.'s three children lived there during renovations. The Tenants rented the entire rental unit which was a house. The upper part of the house was re-rented.

The Tenants further testified as follows. One of the Tenants works near the house and is around it five days a week. Construction on the house started immediately after the Tenants moved out. There was a rental advertisement posted for the house on February 18, 2022. The house in the advertisement looks like a brand-new place and does not have any furniture or belongings in it. There is no way D.A.'s children moved into the house immediately after the tenancy ended. The Tenants rented the entire house and it is now two separate suites. There is no proof D.A.'s children lived in the house as claimed and the rental advertisement shows the house was completely empty.

In reply, the Landlord said the rental advertisement photos were taken when all belongings had been moved downstairs. The Landlord said D.A. created a one-bedroom suite downstairs. The Landlord said D.A. did not re-rent the house until after the six-month timeline. The Landlord said they visited the house several times during renovations and D.A.'s children were living there.

The Tenants provided the rental advertisements. The advertisements show the rental unit as available March 01, 2022. The advertisements state that the rental unit is fully renovated. One of the advertisements is for the upper part of the house. The advertisements have two photos of the inside of the rental unit.

The Landlord provided written submissions which state that D.A.'s three children moved into the rental unit and two of them moved out March 31, 2022. The submissions state that part of the house was re-rented April 01, 2022.

The Landlord submitted a letter dated April 10, 2021, signed by D.A., asking that the Landlord serve the Notice on the Tenants.

The Landlord submitted a letter signed by D.A.'s three children and witnessed by T.G. stating the children moved into the rental unit August 01, 2021. The letter states that two of the children moved out March 31, 2022, and J still lives in the house as of February 17, 2023.

## Analysis

The Notice was issued under section 49(3) of the *Act* which states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the *Act* and states:

(2) Subject to subsection (3), the landlord...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 the landlord...does not establish that

(a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and

(b) the rental unit...has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

As discussed during the hearing, the Landlord should not have issued the Notice in their name. The Notice shows it was issued so the Landlord's child could move into the rental unit which was clearly not the purpose of the Notice. Using the Landlord's name on the Notice is particularly problematic because the Notice does not refer to D.A. anywhere on it. Further, the tenancy agreement was between the Landlord and Tenants and does not refer to D.A. anywhere on it. Two Month Notices should be issued in the name of the owner because that is who intends to use the rental unit for the stated purpose.

Given the Tenants acknowledged they knew the Landlord was the property manager of the rental unit and that it was D.A.'s children who intended to move into the rental unit when the Notice was issued, I have considered whether D.A. followed through with the stated purpose of the Notice.

The Landlord has the onus to prove D.A. followed through with the stated purpose of the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

I am satisfied based on the evidence provided that D.A.'s three children moved into the rental unit August 01, 2021. I find the signed and witnessed letter from D.A.'s children, as well as the testimony of the Landlord, sufficient to prove it is more likely than not D.A.'s children moved into the rental unit August 01, 2021. I am satisfied the stated purpose for the Notice was accomplished within a reasonable period after the effective date of the Notice as required.

D.A.'s children had to live in the house until the end of January 2022. I accept the evidence that all three children lived in the house until March 31, 2022, and find this sufficient to comply with the *Act*. D.A. was allowed to re-rent the house on February 18, 2022. The Landlord has proven D.A. followed through with the stated purpose for the Notice for six months as required.

There is no convincing evidence before me to support the Tenants' position. I do not accept that D.A.'s children could not have lived in the house while it was being renovated. There is no convincing evidence before me showing that the nature of the renovations was such that D.A.'s children could not live in the house during them. The rental advertisement is not convincing evidence that D.A.'s children did not live in the house as claimed. The advertisement is from February 2022, after the six-month period at issue. The advertisement simply shows that two areas of the house did not have belongings in them around February 18, 2022, which does not show that D.A.'s children did not live in the house as claimed.

I acknowledge that the Landlord has the onus to prove D.A. follows through with the stated purpose of the Notice as required and that the Tenants do not have to prove anything in this matter. The Landlord has met their onus of proof for the reasons stated above. I simply also point out that there is not convincing evidence before me calling into question the evidence provided by the Landlord.

Given the above, 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: May 26, 2023

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Residential Tenancy Branch