



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      MNETC, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for compensation of \$27,465.96 from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property dated January 19, 2022 ("Two Month Notice"); and to recover their \$100.00 Application filing fee.

The Tenants and the Landlords appeared at the teleconference hearing and gave affirmed testimony. The Landlords were the people who purchased the residential property from the Tenants' prior landlord.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenants and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Notice of Hearing, Application, or the documentary evidence. The Tenants said they had received these documents from the Landlords and had reviewed them prior to the hearing. The Tenants confirmed that they had not submitted any documentary evidence to the RTB or to the Landlords.

### Preliminary and Procedural Matters

The Tenants provided their email address in the Application and they confirmed it in the hearing. The Landlords provided their email addresses in the hearing. The Parties also

confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

#### Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order, and if so, in what amount?
- Are the Tenants entitled to Recovery of the \$100.00 Application filing fee?

#### Background and Evidence

The Tenants confirmed that their fixed term tenancy with the former landlord began on May 15, 2018, and ran to May 31, 2019, and then operated on a month-to-month basis. They said their final monthly rent was \$2,313.00, due on the first day of each month. They confirmed that they had paid their original landlord a security deposit of \$1,100.00, and no pet damage deposit. The Tenants confirmed that the landlord had returned their security deposit in full at the end of the tenancy.

The Two Month Notice was signed and dated January 19, 2022, it has the rental unit address, it was served via email on January 20, 2022, with an effective vacancy date of March 31, 2022. The Two Month Notice was served on the grounds that all of the conditions for the sale of the rental unit had been satisfied and the purchaser had asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

In the hearing, the Tenants explained the reason for their claim:

We were told we had to move, because the house was sold and there was going to be the owners moving in. And we moved, and not too long after we saw a notice on [a social media advertising site], that the whole house was up for rent. We were told that the new owners were going to move in. They didn't. They were seeking to rent out the unit.

The Landlords replied:

We tried – our earlier plan was that my brother was going to move in. But the house was not in a livable condition. We had to do renovations.... We did a couple renovations, and then my brother moved in, but he couldn't cope with the payment, because he was not able to afford the house. So, after discussion, we planned to rent it out on [a social media advertising site].

The Landlords said that they took possession of the residential property on April 30, 2022, and that it took approximately 15 to 20 days to do the renovations. They said their brother moved in on June 5, 2022, and stayed for about a month. The Landlords said they advertised the residential property for rent for July 1, 2022.

The Landlords said:

Our intent was to have our brother live in the place, and it changed because it was too big a house for him, but he was going to live there for almost a year and buy his own place. We had no other intention on that point. That's all we have to say on that matter.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Section 51 (2) of the Act states that a landlord must pay the tenant an amount that is equivalent to 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.

In the Two Month Notice dated January 19, 2022, the Landlord indicated that the purchasers or a close family member, intends to occupy the rental unit. The Tenants testified and gave documentary evidence that instead of being occupied by the purchaser or a close family member the rental unit was placed on the market for rent. The Tenants provided documentary evidence by way of the online listings showing the rental unit as available for rent as of July 1, 2022.

First, the Landlord's brother is not considered a "close family member" under the Act. Section 49 of the Act defines a "close family member" as the individual's parent, spouse or child, or the parent or child of that individual's spouse. The individual's brother is not a "close family member" under the Act.

Further, the brother did not stay in the residential property for at least six months' duration, so the stated purpose for ending the tenancy was not accomplished, and the residential property was not used for the stated purpose for at least six months.

I accept the evidence that the Landlord/purchaser did not use the rental unit for the purposes stated on the Two Month Notice. Consequently, I find that the Tenants are entitled to a monetary award of **\$27,756.00**, the equivalent of **12 times** the monthly rent of **\$2,313.00** payable under the tenancy agreement. However, the Tenants only claimed **\$27,465.96** for this matter, and therefore, I award them the lower amount, because that is what the Landlords relied on as the amount claimed. I award the Tenants with **\$27,465.96** from the Landlords, pursuant to sections 51 and 67 of the Act.

As the Tenants were successful in their Application, I also award them recovery of their **\$100.00** filing fee, pursuant to section 72 of the Act. I grant the Tenants a **Monetary Order** from the Landlords of **\$27,565.96** pursuant to section 67 of the Act.

### Conclusion

The Tenants are successful in their Application for compensation from the Landlord related to the Two Month Notice. They are awarded **\$27,465.96**, which is the amount they claimed for 12 months rent at the residential property. The Tenants are also awarded recovery of their **\$100.00** Application filing fee from the Landlords.

I grant the Tenants a **Monetary Order** from the Landlords of **\$27,565.96** pursuant to section 67 of the Act.

This Order must be served on the Landlords by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: May 04, 2023

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Residential Tenancy Branch