



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC MNDC FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on August 24, 2023. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both the Landlord, and his son, and both the Tenants attended the hearing and provided testimony. Both parties confirmed receipt of each other's evidence and no service issues were raised.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
- Is the Tenant entitled to compensation pursuant to section 51 of the Act, as a result of receiving Notice to End Tenancy under section 49?

### Background and Evidence

Both parties agree that monthly rent was \$1,600.00 per month, and that it included some utilities (electricity). The Tenants stated they received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) in January 2022, and they moved out around April 3, 2022.

The Tenant provided a copy of the Notice into evidence, and it indicates the following ground as a reason to end the tenancy:

- The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).
  - The child of the Landlord or Landlord's spouse

The Tenants feel misled by the Landlord, and they feel he has not acted in good faith in ending the tenancy. The Tenants spoke to several reasons as to why they do not feel the Landlord have acted in good faith. The Tenants stated that this rental unit is the upper unit in a house, and the lower floor is rented separately to others. The Tenants acknowledged that the house had many issues over the years they lived there, such as problems with the furnace, windows, and water ingress in various areas. The Tenants also noted that the furnace was not working. The Tenants do not feel it is reasonable for the Landlord's son to take 13 months to move in, after the tenancy ended. The Tenants noted that there were "lots of issues" with the house, many of which were moisture and water related.

The Landlord stated that he issued this Notice because this is a farm property and he needs the space for his son to move into so he can be nearby and help with the family business. The Landlord stated that this has been his plan all along, and he never had or has any intention to rent this rental unit out to make more money. Rather, the Landlord stated that he now receives much less rent because his son is only paying \$500.00 per month.

The Landlord stated that his son moved in on April 6, 2022, and his plan was to live in the unit while slowly fixing and repairing the rental unit while he lived there. The Landlord stated that about a week into this plan, the Landlord's son, PB, found what appeared to be black mould in the closet and other areas around the bathroom, kitchen, and windows. The Landlord stated that his son was not comfortable dealing with the mould, so they hired a contractor to come in and give an estimate to remove the mould and repair the affected areas. The Landlord stated that on April 22, 2022, they called a

contractor to come and see the issue, and on June 10, 2022, they hired the contractor to work on the mould and fix the issues with the house.

The Landlord stated that the contractor ended up fixing the roof, which was causing some water damage, the windows, which were leaking, the floors, which had water damage, and to remove all mould affected drywall. The Landlord stated that they only removed the mould affected areas, and photos were provided into evidence showing the mould and the repairs. The Landlord stated that the house was not safe to live in while the repairs and remediations were being completed, so his son, PB, moved back out, and didn't move back in until the repairs were completed in May of 2023.

The Landlord provided a letter from his contractor which states the following:

Once we started the demolition and digging deeper into the home we found multiple locations of black mold behind the drywall which can lead to health concerns if not dealt with. We also found that the house had been leaking for a while resulting in major structural damage to the walls and floor system which would not have been safe to live in and required immediate attention to repair.

The roof was leaking as well as the crawl space which required the house to be dug up and new drainage installed all the way around. Furnace and HVAC maintenance and upgrades were required due to pets living in the house for extended periods of time without proper cleaning and maintenance resulting in furnace failure.

The work mentioned above would not have been possible to complete while having anyone in the house as there was no power, water or heat for extended periods of time. The above work also took roughly 8 months to complete.

The Tenants applied for the return of \$150.00 as part of this monetary application, due to utility bill charges. The Landlord agreed to pay this amount, and both parties to settle this part of the claim for \$150.00 to be paid to the Tenants.

### Analysis

First, I turn to the \$150.00 the Tenants are seeking. Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

Given the agreement reached between the parties during the proceedings regarding this item, I find that the parties have settled this matter. The Landlord agreed to pay the Tenants \$150.00. Both parties consented to this.

With respect to the Tenant's request to obtain 12 months' worth of rent as compensation based on the Notice, pursuant to section 51 of the Act, I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

*ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENOVATIONS AND REPAIRS*

*A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:*

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or*
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).*

*A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:*

- accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.*

*The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.*

*Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.*

As noted above, the onus is on the Landlords to demonstrate that they accomplished the stated purpose for ending the tenancy, as laid out on the Notice or that they have an extenuating circumstance. The Landlord selected the following ground:

- The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

- The child of the Landlord or Landlord's spouse

I turn to the following portion of the Act:

***Tenant's compensation: section 49 notice***

**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.*

The Landlord's son allegedly moved into the rental unit at the start of April 2022, before discovering black mould. He moved out shortly thereafter, and did not move back in until the following May 2023. I find this is a breach of section 51(2) of the Act, since the Landlord's son did not move in, within a reasonable period of time after the notice (usually a matter of weeks), and stay for at least 6 months.

This typically entitles the Tenants to compensation. However, the issue now becomes whether or not the Landlord has sufficiently demonstrated that there were extenuating circumstances such that they should be excused from accomplishing the stated purpose on the Notice and from paying the Tenants compensation.

***Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy states as follows:***

*An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:*

- *A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before 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 didn't notify the landlord of any further change of address or contact information after they moved out.*

*The following are probably not extenuating circumstances:*

- *A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- *A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations*

I have considered the Landlord's explanation regarding why his son moved in, then had to move out after discovering the black mould and significant moisture issues. The Landlord stated that the plan was for his son to move in, and slowly fix issues while he lived in the unit. However, this plan was substantially altered by the discovery of black mould in several areas. The Landlord provided a copy of a letter from the contractor and I find this corroborates the Landlord's version of events with respect to black mould in multiple areas, and significant moisture issues that could only be dealt with if the house was vacant. I am satisfied that the discovery of these issues would have substantially altered the initial plan and would have contributed to the fact that the Landlord's son had to move out, to facilitate the repairs, so that he could then move back in once they were complete. I note the Landlord stated that his son moved in as soon as the repairs were completed by the contractor in May of 2023, and he still resides there. I am satisfied that there were extenuation circumstances that contributed to the Landlord's inability to comply with section 51 of the Act.

Pursuant to section 51(3), I excuse the Landlord from having to pay 12 months compensation for breaching section 51(2).

Pursuant to section 72 of the Act, I award the recovery of the filing fee, since the Tenant's were partly successful in their application(first item). I award \$100.00 for the filing fee, plus the \$150.00 for the first item on the Tenants' application.

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$250.00**. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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: September 5, 2023

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Residential Tenancy Branch