



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION**

Dispute codes: MNDC, FF

### **Introduction**

This was an application by the tenant for a monetary order for payment of compensation due pursuant to a two month Notice to End Tenancy for landlord's use of property. The hearing was conducted by conference call. The tenant and the landlord participated in the hearing.

### **Background and Evidence**

On May 21, 2008 the landlord notified the tenant that he intended to occupy the rental unit and the tenant would have to vacate no later than July 31, 2008. The landlord sent a two month Notice to End Tenancy for landlord's use of property. The Notice was dated May 22, 2008 and it required the tenant to move by August 1, 2008 (the notice should have provided that the tenant move by July 31, 2008). On June 21, 2008 the tenant wrote to the landlord; he advised that he would move out of the rental unit on July 3, 2008. He provided his forwarding address and told the landlord that he calculated that he was entitled to a rent refund of \$1,174.19, being the equivalent of one month's rent as compensation, less his pro-rata rent for the three days in July that he would occupy the rental unit. On July 3, 2008 the landlord returned to the tenant his cheque in payment of rent for the month of July.

The landlord did not pay the requested amount; he took the position that the rental unit was rented month to month rent for July was due on the first and the tenant was properly compensated because his cheque was returned and he paid no rent for the month of July.

### Analysis and Conclusion

Section 51 of the *Residential Tenancy Act* provides that when a tenant receives a Notice to End Tenancy for landlord's use of property he is entitled to receive on before the effective date of the Notice the equivalent of one month's rent payable under the tenancy agreement.

Section 50 of the *Act* permits a tenant, who has received a two month Notice to give the landlord at least 10 days' written Notice to end the tenancy on a date that is earlier than the effective date of the landlord's Notice. The tenant is obliged to pay proportionate rent for the portion of the month that he occupies the rental unit, but a tenant's notice to end the tenancy early does not affect the tenant's right to compensation under section 51; he is still entitled to receive the equivalent of one month rent as compensation.

I find the tenant is entitled to compensation equivalent to one month's rent, or \$1,300.00, less the sum of \$125.81, being pro-rata rent for three days in July. I award the tenant the sum of \$1,174.19. The tenant is entitled to recover the \$50.00 filing fee for this application for a total award of \$1,224.19 and I grant the tenant a monetary order pursuant to section 67 in the said amount. This order may be registered in the Small Claims court and enforced as an order of that court.

Dated September 23, 2008.