



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC FF

### Introduction

This hearing dealt with an application by the tenant for monetary compensation under the Act. The tenant and the landlord participated in the teleconference hearing.

### Issues(s) to be Decided

Was the new owner of the property properly named as the respondent in this application?

Is the tenant entitled to monetary compensation as claimed?

### Background and Evidence

On or about July 21, 2009 the landlord served the tenant with a two month notice to end tenancy for landlord's use. The notice indicated that all of the conditions for 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 intended in good faith to occupy the rental unit.

The evidence of the tenant on her application was as follows. The tenant paid her full rent of \$1100 for August 2009. On September 1, 2009 the tenant served the new owner, AR, with her written notice to vacate the rental unit as of September 11, 2009, by placing a letter into the new owner's mailbox. The tenant did not pay any rent for any

portion of September 2009. The tenant vacated the unit on September 11, 2009. The tenant did not receive compensation equivalent to one month's rent, pursuant to section 51 of the Residential Tenancy Act, and has applied for that compensation.

The tenant's application for dispute resolution also indicated that she sought further compensation equivalent to two months of rent, because the new owner, AR, had placed an ad on Craig's List to rent out her suite. No evidence was heard by the tenant or AR on this portion of the tenant's application. I will address this portion of the application in my analysis, below.

The response of the respondent, AR, was as follows. AR purchased the property and took over as the new landlord prior to September 1, 2009. AR, as the new landlord, expected to receive rent from the tenant on September 1, 2009. In regard to the letter that the tenant stated she left for the landlord on September 1, 2009, the landlord first stated that he did not have that letter in front of him at the time of the hearing, and then he later stated that he did not recall having received that letter at all.

### Analysis

In regard to whether the tenant properly named the new owner as respondent in this application, I find as follows. Although the previous owner served the tenant with the notice to end tenancy, the new owner took over as landlord before the tenancy ended, and anticipated receiving rent from the tenant for September 2009. I therefore find that AR was the new landlord before the tenancy ended, and as such was properly named as the respondent in this application.

In regard to compensation equivalent to one month's rent, I find as follows. Section 51 of the Act sets out that a tenant who receives a notice to end tenancy for landlord's use is entitled to compensation equivalent to one month's rent. The compensation may be in the form of one of the following:

- 1) financial restitution, where the landlord pays the tenant the equivalent of one month's rent on or before the effective date of the two month notice,
- 2) occupancy, where the tenant withholds the last month's rent and occupies the rental unit rent-free for that last month, or
- 3) a combination of both.

Under section 50 of the Act, a tenant who has received a notice to end tenancy for landlord's use may end the tenancy early by giving a written 10 day notice to end the tenancy on a date earlier than the effective date of the landlord's notice.

Where the tenant has paid full rent for the first of the two months and has given a written 10 day notice to vacate on a date that falls in the second month, one of the following applies:

- a) the tenant pays the full amount of rent for the second month, vacates partway through the second month, and then is entitled to receive from the landlord return of the prorated rent representing the remaining days of the second month after the date the tenant has vacated, as well as compensation equivalent to one month's rent,
- b) the tenant pays partial rent for the days of occupation, and then vacates partway through the second month, and is entitled to receive from the landlord compensation equivalent to one month's rent, or
- c) the tenant does not pay any rent, thereby receives free occupancy for a portion of the last month, and then is entitled to receive financial restitution for the remaining days of the last month, after the tenant has vacated.

In this case, I find as follows. I accept the tenant's testimony that she served the landlord her 10 day notice to vacate on September 1, 2009. The landlord's testimony on this point was unclear and contradictory. The tenant did not pay any rent for September, and she vacated on September 11, 2009. The tenant therefore received compensation in the form of free occupancy for September 1 through 11, 2009, and she is entitled to receive from the landlord financial restitution for September 12 through 30, 2009, in the amount of \$696.67.

In regard to the tenant's application for further compensation equivalent to two months of rent, I find as follows. Section 51(2) of the Act states that if steps have not been taken to accomplish the purpose cited for ending the tenancy within a reasonable time after the effective date of the notice, or if the rental unit is not used for that stated purpose for at least six months beginning within a reasonable time after the effective date of the notice, then the tenant is entitled to compensation equivalent to two months of rent. In this case, the effective date of the notice was September 30, 2009. The tenant made her application for compensation on September 25, 2009, before the effective date had even passed. I find that the portion of the tenant's application regarding the additional two months of compensation was premature, and it is therefore dismissed with leave to reapply.

### Conclusion

The tenant is entitled to compensation of \$696.67, as well as recovery of the \$50 filing fee for the cost of her application. I grant the tenant an order under section 67 for the balance due of \$746.67. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: January 13, 2010.

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Dispute Resolution Officer