



# 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 for Dispute Resolution by the Tenant seeking a monetary order.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties acknowledged receipt of the others' evidence; however only the evidence timely submitted and relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the Tenant entitled to obtain a monetary order?

### Background and Evidence

I heard undisputed testimony that this tenancy began on August 15, 2007, and ended on May 31, 2010. In dispute is the reason and notice of the tenancy ending.

The Tenant has applied for the equivalent of one month's rent and is basing this claim on Section 49 (c) and 51(1) of the Act. The Tenant did not supply relevant evidence in support of her claim, but testified that the Landlords gave her verbal notice to end the tenancy and that she is entitled to a monetary award equivalent to one month's rent.

The Landlords supplied evidence by way of an extensive email train which indicated the first mention of this tenancy ending was initiated by the Tenant on August 10, 2009, in which the Tenant mentioned looking for other places.

There was another email from the Tenant in December 2009 indicating her tenants at a rental unit she owned needed more time to move, so she asked if an April 2010 time frame would be acceptable. Further the February 28, 2010, email from the Tenant stated as follows: “Just wanted to double check that **we** agreed that I’d vacate effective May 1 before I give my tenants notice....” [emphasis added]

A March 2, 2010, email from the Tenant to the Landlord stated that she would be out on May 31, 2010, which was in response to the Landlord’s email of March 1, asking for a move out date, which they wanted to make convenient for her.

The Landlords disputed giving the Tenant a verbal notice. The Landlords confirmed they did not issue a 2 Month Notice to End Tenancy and testified and gave evidence that the Tenant initiated the end of the tenancy when she told them she was looking at places to buy, not them.

### Analysis

Based on the foregoing testimony and evidence, and on a balance of probabilities, I find as follows:

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

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.

I find the Tenant has failed to establish all four elements necessary for proving a claim for loss or damage. I find the parties confirmed the Landlords did not issue nor did the tenant ever receive a 2 Month Notice to End Tenancy under section 49 of the *Act*. I find

the Tenant's testimony lacked credibility and I accept the Landlords' evidence and testimony that they never sought the end of the tenancy. Therefore I find that the Tenant has **not** proven a monetary claim for the alleged loss under the Act.

I **dismiss** the Tenant's Application without leave to reapply.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

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: November 09, 2010.

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Dispute Resolution Officer