



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      FF, MNDC, MNR, OPR

### Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

At the time of the application the applicant was requesting an Order of Possession based on a Notice to End Tenancy for non-payment of rent, a monetary order for \$1200.00, and an order for the respondent to bear the \$50.00 cost of the filing fee that she paid for her application for dispute resolution.

By the date of the hearing the landlord already had possession of the rental unit, and withdrew her claim for January 2011 rent in the amount of \$800.00.

Therefore the claim is now only for \$400.00 and the \$50 filing fee.

### Background and Evidence

The applicant testified that:

- She had taken over renting this full property, however had agreed to allow the tenant in the lower suite to stay in the suite for a period of time.
- The tenant knew that she wanted to eventually take over the whole property for her own use and had agreed to vacate by December 15, 2010.
- The tenant subsequently failed to vacate by December 15, 2010, and did not pay any rent for the last half of December, therefore on December 16, 2010 she served the tenant with a 10 day Notice to End Tenancy for non-payment of rent.
- The tenant vacated the rental unit on December 30, 2010.

The applicant is therefore requesting an order for \$400.00 to cover the outstanding rent for the month of December 2010. She is also requesting an order that the tenant bear the \$50.00 cost of the filing fee.

The respondent testified that:

- He did have a mutual agreement to move out of the rental unit on December 15, 2010 because the landlord wanted to use the full rental property for herself.
- When he made this agreement he was unaware of section 49 of the Residential Tenancy Act that requires the landlord to give two months notice to end tenancy for landlord use and which also requires the landlord to compensate the tenant the equivalent of one month's rent.
- Therefore since he was moving because the landlord wanted to use the rental property for herself, he believes that his last month's rent should be free.
- He did receive the 10 day Notice to End Tenancy, and he vacated on December 29, 2010.

## Analysis

Section 51 of the Residential Tenancy Act states:

**51** (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

However in this case; although the landlord did want to use the rental property for her own use, the tenant did not receive a Notice to End Tenancy under section 49, and in fact the tenancy was ending pursuant to a mutual agreement, and there is no requirement to give one month compensation for ending a tenancy by mutual agreement.

The tenant did not have to move by mutual agreement, and could have insisted on receiving the proper two months Notice to End Tenancy required under section 49, and in that case the landlord would have been required to compensate the tenant the equivalent of one month's rent.

However if the tenant was insisting on receiving the two months notice required under section 49, the tenant would still be required to pay the full rent until the tenant received that notice. No such notice was ever served on the tenant and since the tenant failed to pay the full rent for the month of December 2010, the landlords 10 day Notice to End Tenancy was a valid notice.

Therefore this tenancy ended pursuant to the 10 day Notice to End Tenancy, and no compensation is required for a 10 day notice.

I therefore allow the landlords claim for the remainder of December 2010 rent and for the filing fee.

### Conclusion

I have issued an order for the respondent to pay \$450.00 to the applicant.

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: January 17, 2011.

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Residential Tenancy Branch