



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNDC, FF

### **Introduction**

This hearing dealt with an application by the tenant for a monetary order for compensation for loss under the *Act* and for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issue(s) to be Decided**

Is the tenant entitled to compensation and the return of the filing fee?

### **Background and Evidence**

The tenancy started on July 01, 2009 and ended on June 23, 2010, after the tenant was served a two month notice to end tenancy for landlord's use of property. The monthly rent was \$650.00. The tenant filed a copy of the notice to end tenancy dated June 03, 2010 which stated that the reason for the notice was that the landlord or his family member intended to move into the rental unit.

The tenant stated that she had already paid rent for June 2010 prior to receiving the notice to end tenancy. The landlord stated that he had not received rent for June. The tenant did not file any evidence of having paid rent and stated that she paid rent to the landlord's ex wife.

The tenant agreed that the landlord was the only person named on the tenancy agreement. The landlord stated that he specifically told the tenant not to pay rent to anyone other than himself. The landlord filed copies of letters written to the tenant on May 03, 2010 and April 01, 2010, asking the tenant not to pay rent to his son or his ex wife.

### **Analysis**

The tenant claims compensation under section 51 of the *Act* which provides as follows:

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.

Pursuant to Section 51 (1.1) of the *Residential Tenancy Act*, a tenant may withhold the amount authorized from the last month's rent.

In this case, the tenant received the notice to end tenancy for landlord's use of property under Section 49. The notice indicated that the landlord intended in good faith to occupy the rental unit. Therefore, I find that the tenant is entitled to compensation in the amount of one month's rent. The tenant stated that she paid rent for the last month of tenancy while the landlord denied having received rent for the last month of tenancy.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

Based on the testimony of both parties, I find that the tenant did not pay rent for the last month of tenancy to the landlord as named in the tenancy agreement and did not file any evidence to show that rent had been paid. Accordingly, I find that the tenant withheld rent for the last month of the tenancy and therefore has been adequately compensated, pursuant to a section 49 notice to end tenancy.

The tenant has not proven her case and I dismiss her application without leave to reapply. The tenant must also bear the cost of filing this application.

### **Conclusion**

The tenant's application is dismissed in its entirety.

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: October 03, 2011.

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Residential Tenancy Branch