



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FF, MNDC, RPP

### Introduction

Some 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

This is a request for a monetary order for \$1360.00 and a request for return of personal property.

### Background and Evidence

The applicant testified that:

- On June 28, 2011 the landlord served her with a two-month Notice to End Tenancy for landlord use.
- On or about August 1, 2011 they both signed a mutual agreement that she would vacate on August 15, 2011.
- She paid her full rent right to the date that she vacated however the landlord has refused to return one month's rent compensation as required when a two month Notice to End Tenancy is given.

- She is therefore requesting an order for the landlord to pay her the equivalent of one month rent - \$1250.00.
- She also left some homemade champagne at the rental unit when she vacated and had informed the landlord she would come back to collect it, however when she went back to collect the champagne it was no longer there and the new owners of the property told her that the respondent had taken it.
- She is therefore requesting \$10.00 per bottle for six bottles for a total of \$60.00.
- She is also requesting recovery of her \$50.00 filing fee.

The respondent testified that:

- The tenant signed a fixed term tenancy agreement for a one-year term ending on October 22, 2011.
- They also checked off the box that said at the end of this fixed time the tenancy may continue on a month-to-month basis or another fixed length of time.
- Therefore when he sold the property he gave the tenant a full four months to end the tenancy, on a 2 month Notice to End Tenancy form for landlord use.
- However he gave her right to the end of the fixed term tenancy and therefore does not believe he should have to pay any compensation to the tenant.
- The tenancy agreement did not say that the tenancy would continue at the end of the fixed term, it simply stated the tenancy of **may** continue, however in this case he chose not to have the tenancy continue.
- They did come to a mutual agreement on or about August 1, 2011 to have the tenant vacate on August 15, 2011.
- He does not recall the tenant stating that she would be coming back to pick up some champagne bottles, and therefore when he found the bottles had been left behind he disposed of them as he did not believe they were of any value.

### Analysis

When a landlord and tenant enter into a fixed term tenancy they can either agree that at the end of that fixed term the tenancy ends and the tenant must move out of the rental

unit, or they can agree that at the end of the fixed term the tenancy may continue on a month-to-month basis or for another fixed length of time.

If they agree that at the end of the fixed term the tenant must move out of the rental unit, then the landlord is not required to give any notice to end tenancy, and the tenant must vacate at the end of the fixed term.

However if they choose the section that states that the tenancy may continue on a month-to-month basis or another fixed length of time, then if the landlord wants to end the tenancy at the end of that fixed term the landlord is required to give a Notice to End Tenancy.

If the landlord uses the "2 month Notice to End Tenancy For Landlord Use of Property" form, the landlord is required to compensate the tenant the equivalent of one month's rent or give the tenant the last month rent free as compensation, even if he is ending the tenancy at the end of the fixed term.

Further, at any time after receiving a two-month Notice to End Tenancy the tenant may vacate earlier as long as they give the landlord at least 10 days written notice to do so, and in this case both the landlord and the tenant have testified that the mutual agreement to end the tenancy on August the 15th, was signed around the beginning of August 2011 and therefore is at least 10 days notice.

Ending the tenancy earlier with at least 10 days notice does not affect the tenant's right to the equivalent of one month's compensation.

Therefore since the landlord did not give the tenant one month's compensation I allow the tenants claim for the equivalent of one month rent - \$1250.00.

As far as the champagne is concerned is my decision that the applicant has not met the burden of proving that she informed the landlord she would be returning to collect the

champagne, and therefore I will not allow the claim for compensation for six bottles of champagne that were disposed of by the landlord.

I will however order recovery of the \$50 filing fee.

Conclusion

I have issued a monetary order in the amount of \$1300.00 and the remainder of this claim 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: January 17, 2012.

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Residential Tenancy Branch