



# 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 money owed or compensation due to damage or loss and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

### Background and Evidence

This tenancy began December 1, 2010 with monthly rent of \$920.00 and the tenants paid a security deposit of \$460.00.

On October 27, 2011 the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property.

The tenant testified that after receiving the notice from the landlord that the tenant, per the Act, gave the landlord notice to vacate the rental property November 9, 2011. The tenant stated that he had paid the November rent in full, vacated the rental unit on November 9, 2011 but that the landlord did not return the pro-rated rent to the tenant

The tenant stated that the landlord did provide the tenant with 1 month's rent compensation per the Act which is required when a landlord serves a tenant with a 2 month notice to end tenancy for landlord's use of property.

The landlord's agent questioned the return of the rent to the tenant and was referred to section 50 of the residential Tenancy Act.

### Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to a monetary order for money owed or compensation due to damage or loss.

After receiving the landlord's 2 month notice to end tenancy for landlord's use of property the tenant, per the *Act*, provided the landlord with notice to vacate November 9, 2011. The landlord however did not comply with section 50 of the *Act* and return the unused portion of the November 2011 rent to the tenant.

Residential Tenancy Act section **50 Tenant may end tenancy early following notice under certain sections** speaks to:

*(1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property] or 49.1 [landlord's notice: tenant ceases to qualify], the tenant may end the tenancy early by*

*(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and  
(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.*

***(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.***

*(3) A notice under this section does not affect the tenant's right to compensation under section 51 [tenant's compensation: section 49 notice].*

Accordingly I find that the tenant is entitled to a monetary order for \$1084.86.  
(\$1550.00 per month rent, pro-rated at \$51.66 per day for 21 days = \$1084.86)

As the tenant has been successful in their application the tenant is entitled to recovery of the \$50.00 filing fee.

### Conclusion

I find that the tenant has established a monetary claim for \$1084.86 in return of the unused portion of rent paid for November 2011.

The tenant is also entitled to recovery of the \$50.00 filing fee. I grant the tenant a monetary order under section 67 for the amount of **\$1134.86**.

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: February 28, 2012

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Residential Tenancy Branch