



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC and FF

### Introduction

This hearing was convened on the tenant's application for the equivalent of two-month's rent minus six days on grounds that the landlord failed to provide one-month's free rent after giving notice to end the tenancy for landlord use.

### Issue(s) to be Decided

This matter requires a decision on whether the tenant is entitled to a monetary award for the free rent and whether the amount should be doubled.

### Background and Evidence

This tenancy began on January 1, 2007 and ended on January 31, 2012 pursuant to a notice delivered to the tenant by email on January 15, 2012. Rent was \$1,250 per month and the security deposit has since been returned to the tenant.

During the hearing, the parties referred to an exchange of emails in which the landlord had first advised his intention to list the rental unit for sale on January 15, 2012.

The landlord advised the tenant that the notice would permit him to remain until March 15, 2012 (incorrect as end dates are based on the rent due date and the earliest end date on a two month notice served January 15, 2012 would have been March 31, 2012). The landlord offered the tenant free rent for February 2012 if he were to leave at the end of the month.

The tenant declined formal notice, advised the landlord by email on January 20, 2012 that he believed he would be able to leave at the end of January 2012 and confirmed that notice on January 27, 2012, leaving the rental unit by February 1, 2012.

The landlord stated that he declined to provide the free month's rent because the tenant had given only four days notice and the rental unit was left in a condition that required substantial cleaning and repair.

### Analysis

I find that neither party has followed the *Act*.

Section 49(5) of the *Act* permits a landlord to issue a two-month Notice to End Tenancy to accommodate a sale of the property but only if the landlord has a signed offer for the unit with all conditions satisfied and the purchaser has asked the vendor in writing for vacant possession. In addition, the notice must be given on the prescribed form. The notice given by the landlord met none of these requirements. In effect, there was no Notice to End Tenancy and the tenant was under no obligation to leave.

While section 50 of the *Act* would have permitted the tenant to vacate early under a proper Notice to End Tenancy, it requires that such notice be served in writing 10 days before the end of tenancy date.

In addition, the doubled payment sought by the tenant is only applicable if the landlord has not used the rental unit for the purpose stated, or failed to take steps toward that purpose within a reasonable time. Again, this provision is dependent on a properly served notice and, while the property is listed for sale, the landlord stated that it has not yet been sold.

Even though the tenant's departure appears to have been an effort to accommodate the landlord, in the absence of an effective Notice to End Tenancy for landlord use, I must find that the tenancy ended under an informal mutual agreement between the parties.

Therefore, I find that the tenant is not entitled to the remedies available with respect to a landlord's Notice to End Tenancy for landlord use and the application is dismissed without leave to reapply.

Conclusion

The 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: June 04, 2012.

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Residential Tenancy Branch