



# 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 for Dispute Resolution by the tenant for a monetary order for compensation for the equivalent of one month rent under 51(1) applicable when a Two-Month Notice to End Tenancy for Landlord's Use, section 49, has been issued and a prorated rent refund or credit the tenant feels is owed to him under section 50 of the Act.

Despite being served with the Notice of Hearing and submitting their own evidence to the file, the landlord did not appear.

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

Did the tenant receive the equivalent of one month compensation under section 51(1)?

Is the tenant entitled, under section 50 of the Act, to pay pro-rated rent for early Notice?

### **Background and Evidence**

The tenancy began in November 2010 and the tenant vacated pursuant to a Two Month Notice to End Tenancy for Landlord's Use issued by the landlord. The Notice to End Tenancy for Landlord's Use was dated May 3, 2012 and was effective July 31, 2012. However, on May 22, 2012 the tenant gave the landlord early notice to vacate as of June 15, 2012.

Submitted into evidence was a copy of a Two Month Notice to End Tenancy for Landlord's Use, tenancy agreement, copies of communications and written testimony.

The tenant testified that his rent was paid up-to the end of May 2012 and then the landlord chose not cash the tenant's June rent cheque, apparently allocating it as payment of the equivalent of one-month rent compensation, required under the Act when a Two Month Notice to End Tenancy for Landlord's Use is issued.

The tenant testified that he was aware that, under the Act, he was entitled to terminate the tenancy on 10 days Notice any time after receiving a Two Month Notice to End Tenancy for Landlord's Use. The tenant stated that if he exercised this option under the Act, he could only be charged for the portion of the month that he actually resided in the

unit during the final month and the landlord would have to credit him or refund to him a portion of the rent for the period he was not residing in the unit in that particular month.

The tenant received a credit from the landlord for \$700.00 purportedly in lieu of rent owed for June. However, the tenant believes that he is owed another \$350.00 because he did not owe a full month rent for June, since he gave proper notice and moved out on June 15, 2012.

The tenant testified that the landlord told the tenant that she actually overpaid him because she had supposedly found out that that he was only entitled to be compensated the equivalent of half a month, not \$700.00, since he left in mid-June.

The tenant is of the opinion that the landlord has misunderstood the Act and seeks \$350.00 additional compensation as he only resided in the unit until June 15, 2012.

### **Analysis**

Section 49(5) provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. I find that the landlord issued a Two Month Notice to End Tenancy for Landlord's Use May 3, 2012 ending the tenancy effective July 31, 2012.

Section 51(1) requires that a tenant receive the equivalent of one month compensation by the landlord with a Notice to End Tenancy for Landlord Use. Therefore, I find that the tenant was entitled to be paid the equivalent of \$700.00 by the landlord.

Based on the evidence submitted by the parties, I accept that the landlord credited the tenant with what she believed was the equivalent of one-month rent by not cashing his cheque for June 2012. I find that the landlord attempted to comply with section 51(1) of the Act in this regard but evidently misunderstood sections 50 and 51 of the Act.

Section 50 (1) of the Act states that once 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 has a right to end the tenancy earlier 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.

In the situation before me, the tenant would have been required to pay "*the proportion of the rent due to the effective date of the tenant's notice*", which is \$350.00 owed for June

2012. The fact is, under the Act, the tenant did not owe rent for the full month of June 2012. He only owed the proportionate amount of one half a month rent or \$350.00.

Subsection 50(2) provides that, if the tenant has already 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. This section is not applicable to the case before me as the tenant had not already paid June's rent.

With respect to how vacating earlier than the effective date shown on the Two Month Notice would impact the tenant's entitlement to receive the section 51 refund or credit for the equivalent of one month rent, section 50(3) deals with this. Section 50(3) specifically states that a tenant's earlier notice under section 50 does not affect the tenant's right to compensation under section 51 *[tenant's compensation: section 49 notice]*.

In other words, under the Act, once this tenant gave his early notice to leave effective June 15, 2012, this tenant could then only be charged \$350.00 rent for the portion of the month of June, (from June 1, 2012 to June 15, 2012) that he actually resided in the unit. In addition, the tenant would still be entitled under the Act to the equivalent of one full month rent, which in this case is another \$700.00.

Regardless of what other instructions the landlord may have been following, the total credits that this landlord owed to the tenant amounted to \$1,050.00, comprised of a pro-rated reduction of rent for June 2012 in the amount of \$350.00, plus the mandatory equivalent of one month rent in the amount of \$700.00 under section 51 of the Act

I find that, in this case, the landlord had only paid or credited the tenant with \$700.00 representing the equivalent of one month rent, but neglected to refund the additional \$350.00 to compensate the tenant for the portion of the month of June during which the tenant no longer resided in the unit.

Based on the evidence and testimony, I find the tenant is entitled to further monetary compensation from the landlord in the amount of \$400.00, comprised of \$350.00 refund for the proportion of the month after the tenant vacated in June and the \$50.00 cost of the application.

### **Conclusion**

I hereby grant the tenant a monetary order in the amount of \$400.00. This Order is final and binding. It must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court

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: September 05, 2012.

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Residential Tenancy Branch