



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, FF, O

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on September 28, 2015 for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”); for the Landlord to comply with the Act; for “Other” issues; and to recover the filing fee from the Landlord.

Both parties appeared for the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenant’s Application. The parties confirmed receipt of each other’s documentary evidence served prior to the hearing. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided. While I have considered the evidence provided by the parties in this case, I have only documented that evidence which I relied upon to making findings in this decision.

### Issue(s) to be Decided

- Is the rental unit a subsidised rental unit?
- Is the Tenant entitled to the monetary compensation payable under the 2 month notice to end tenancy?

### Background and Evidence

The parties agreed that this tenancy started on May 1, 2013 for a fixed term of six months after which the tenancy continued on a month to month basis. Rent under the written tenancy agreement started off at \$1,849.00 and at the end of the tenancy it was \$1,895 payable by the Tenant the first day of each month.

The Tenant testified that he asked the Landlord whether he could move his family into the rental unit as his son was in the process of purchasing a property. The Landlord responded by informing the Tenant that he wanted to move his daughter and her family into the rental unit. The Tenant explained to the Landlord that if he wanted to end the tenancy for this reason then he must serve him with a notice to end tenancy for the Landlord's use of the property. As a result, on April 28, 2015 the Landlord served the Tenant with a 2 Month Notice. This was provided into written evidence and shows a vacancy date of July 31, 2015. The reason for ending the tenancy is because the Landlord wanted the rental unit to be occupied by his family member.

The Tenant confirmed receipt of the Notice and testified that he paid rent for the months of May, June and July 2015 as evidence by his receipts. The Tenant moved out of the rental unit on July 31, 2016 in accordance with the vacancy date on the Notice. However, the Landlord failed to return to him the one month's compensation payable despite repeated requests for this from the Landlord in writing. As a result, the Tenant now makes an Application to claim \$1,895.00 from the Landlord.

The Landlord testified that the Tenant duped him into serving him the Notice as he was of the understanding that he was helping the Tenant with his situation regarding his sub tenancy that the Tenant had established during the tenancy. The Landlord explained that this was an issue of truthfulness on the part of the Tenant. The Landlord said that he should not have to compensate the Tenant pursuant to the Notice because the Landlord had highlighted the area on page 2 of the Notice informing that no compensation is payable where the Tenant does not qualify for a subsidized rental unit.

When the Landlord was asked if this was a subsidized rental unit and whether the rental unit was operated by or on behalf of a housing body or whether the Tenant's rent was based on eligibility criteria related to incomes, number of occupants, health or other similar criteria, the Landlord replied no. The Tenant disputed the Landlord's testimony under which the Notice was provided to the Tenant. The Tenant explained that the Landlord wanted to move his family member in and he advised the Landlord that the only way to do this legally would be through the 2 Month Notice.

### Analysis

I have carefully considered the evidence of both parties and make findings on the balance of probabilities as follows. Section 51(1) of the Act requires that a tenant who receives a Notice is entitled to receive from the Landlord an amount that is equivalent to one month's rent payable under the agreement.

Section 49.1 of the Act explains the requirement parties must follow to qualify as a subsidized rental unit. In this respect, the Landlord provided insufficient evidence for me to make a finding that this was a subsidized rental unit or the Tenant's rent was based on eligible criteria. Furthermore, the Landlord presented insufficient evidence that he was duped into giving the Tenant the 2 Month Notice. A landlord must be informed of all their rights and obligations before signing and serving a tenant with a notice to end tenancy; this is the reason why the 2 Month Notice carries extensive information to the parties on page 2 which must be read, understood, and adhered to by each party.

In addition, the Landlord indicated on the 2 Month Notice that the reason for ending the tenancy was because he wanted to have the rental unit occupied by a family member, and not because the Tenant did not qualify for the subsidized rental unit, which was an option of page 2 of the 2 Month Notice. Therefore, I am only able to conclude that the tenancy was ended with the 2 Month Notice for the Landlord's use of the property and not because the Tenant did not qualify for subsidized rent. Therefore, under the Act and pursuant to the Notice, the Landlord is liable to give the Tenant one month's rent as compensation in the amount of **\$1,895.00**.

The Tenant was informed during the hearing that the costs associated with preparation for dispute resolution, such as mailing costs, are not awardable under the Act. As the Tenant had to make an Application to recover his compensation, I also award the Tenant the filing fee of **\$50.00** pursuant to Section 72(1) of the Act. As a result, the Tenant is issued with a Monetary Order for **\$1,945.00**. This order must be served on the Landlord and may then be enforced in the Provincial Court (Small Claims) court.

### Conclusion

The Tenant is entitled to compensation as a result of the Landlord's notice to end the tenancy. Therefore, I grant the Tenant a Monetary Order and recover of the filing fee in the amount of **\$1,945.00**. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 11, 2016

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Residential Tenancy Branch