



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MNDC

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein she sought \$1,050.00 in monetary compensation from the Landlord.

Both parties appeared at the hearing. The Tenant was assisted by an advocate, J.W. and the Landlord was assisted by H.T. who acted as his agent at all material times during the tenancy.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?

### Background and Evidence

This six month fixed term tenancy began March 1, 2015. The tenancy agreement submitted in evidence indicated that the tenancy could continue on a month to month basis or another fixed term following that time. Monthly rent was payable in the amount of \$1,050.00 and the Tenant paid a security deposit of \$525.00.

The Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property on July 30, 2015 with an effective date of September 30, 2015 (the "Notice"). The effective date of the Notice coincided with the expiration of the initial six month fixed term.

The Tenant testified that upon receiving the Notice, she began looking for alternate accommodation. She stated that she provided the Landlord with notice to end her tenancy on

August 19, 2015 with an effective date of August 31, 2015 (the "Tenant's Notice"). The Tenant confirmed that she moved out on August 31, 2015.

The Tenant testified that she paid rent for August 2015. In this application she sought compensation equivalent to 1 month's rent pursuant to section 51 of the *Residential Tenancy Act*.

A.F. testified on behalf of the Landlord. A.F. stated that she did not believe that the Tenant was entitled to financial compensation in the form of one month's rent, as the Tenant was not permitted to end the tenancy before September 30, 2015. She stated that she believed she did not need to pay the Tenant compensation, only provide her with free rent for the month of September, which in essence she did.

### Analysis

The Landlord issued a 2 Month Notice pursuant to section 49 which reads in part as follows:

#### **Landlord's notice: landlord's use of property**

**49** (2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

As noted previously, the effective date of the Notice was consistent with the expiration of the initial six month fixed term, namely September 30, 2015.

Section 50 applies to periodic tenancies and provides as follows:

#### **Tenant may end tenancy early following notice under certain sections**

**50** (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*].

Section 49(2)(c) specifically prohibits a Landlord from issuing a 2 Month Notice with an effective date prior to the end of the fixed term. Section 50 does not apply to fixed term tenancies as the parties are bound by the terms of the fixed term tenancy. Unless the parties agree, neither party can end a fixed term tenancy prior to the end of the fixed term.

The parties agreed that the Tenant did not pay rent for September 2015. Pursuant to the Notice, the Tenant was entitled to compensation equivalent to one month's rent. As she was bound by the fixed term tenancy to pay rent until the end of September 2015, and she did not pay rent for September 2015, she has in essence, already received her compensation under section 51.

For these reasons the Tenant's Application is dismissed.

#### Conclusion

The Tenant's Application is dismissed.

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: April 29, 2016

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Residential Tenancy Branch