



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HEATHERLEA APTS. INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the tenant's application for a Monetary Order against the landlord for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary Issue(s)

The landlord raised a preliminary matter as to whether there is basis for the tenant to pursue the landlord for monetary compensation. Below, I have summarized the parties' respective positions on this matter.

The parties had participated in two hearings to deal with a 2 Month Notice to End Tenancy for Landlord's Use of Property dated March 22, 2015 under the same file number (file number provided on the cover page of this decision). The tenant had filed to dispute the Notice and a hearing was held on April 21, 2015. On April 22, 2015 the Arbitrator issued a decision cancelling the 2 Month Notice. The landlord filed an Application for Review Consideration under the ground new and relevant evidence and a new hearing was ordered. A new hearing was held on June 18, 2015 with a different Arbitrator. On June 18, 2015 the Arbitrator issued a decision and recorded that the parties had reached a settlement agreement whereby the tenant agreed to vacate the rental unit by September 1, 2015 and "The tenant waives a claim for any compensation to vacate the rental unit."

The Application for Dispute Resolution before me is accompanied by a Monetary Order Worksheet that itemizes a number of costs and losses related to the tenant moving from the rental unit to a new residence.

The landlord pointed out that as recorded in a decision issued on June 18, 2015 the parties settled their dispute by way of the tenant agreeing to vacate the rental unit as of September 1, 2015; and, the tenant waiving a claim for any compensation to vacate the rental unit. The landlord pointed out that the tenant did not seek a correction, clarification or a review of that decision.

The tenant responded by stating that she did not recall having any discussion during the June 18, 2015 hearing about waiving compensation and she was of the position that the Arbitrator did not conduct that proceeding fairly and left her with no choice but to agree to move out. The tenant also stated that she chose to agree to move out of the rental unit so as to avoid the risk of having the bailiff come remove her from the rental unit considering her evidence was not before the Arbitrator on June 18, 2015 and her witness was not available to testify. The tenant acknowledged that she did not seek a correction, clarification or review of the June 18, 2015 decision.

Despite agreeing to vacate the rental unit, the tenant explained that the basis for seeking compensation from the landlord is, in part, because in December 2015 the City enacted a by-law that provides tenants more protection from "renovictions". As explained to the parties, my jurisdiction to resolve disputes is provided under the Residential Tenancy Act and I do have jurisdiction to enforce City by-laws. Rather, a party filing a monetary claim with the Residential Tenancy Branch must be prepared to establish that the other party violated the *Residential Tenancy Act*, the Residential Tenancy Regulations or their tenancy agreement. The tenant was asked to point to a specific violation of the Act, Regulations or tenancy agreement by the landlord that resulted in the losses the tenant is seeking to recover. The tenant stated that the landlord did not have permits prior to issuance of the 2 Month Notice. I did not seek a response from the landlord because I found that submission not relevant to the claims before me for the following reasons.

Where a landlord has indicated on a 2 Month Notice to End Tenancy that they intend to demolish or renovate the rental unit and the tenant takes the position the landlord does not have permits, that position may be a basis to dispute the Notice and have it cancelled. However, that does not form a basis to pursue the landlord monetarily after agreeing to vacate the rental unit. After two hearing to deal with the 2 Month Notice the tenant ultimately agreed to vacate the rental unit. Under the Act, if a landlord does not use the rental unit for the purpose stated on the 2 Month Notice within a reasonable amount of time after the tenancy ends, the tenant's recourse is to seek compensation from the landlord under section 51(2) of the Act, which is the equivalent of two month's rent. The tenant did not indicate that the landlord did not renovate the rental unit after

her tenancy ended. Rather, the tenant provided testimony that the landlord offered her the first right of refusal after the renovations were completed.

In light of the above, I found the tenant is precluded from making a monetary claim against the landlord with respect to compensation for vacating the rental unit due to her agreement to waive any such entitlement, as recorded in the June 18, 2015 decision, and because she did not establish that the landlord violated the Act, Regulations or tenancy agreement that would entitle her to compensation. Therefore, I declined to proceed any further with the tenant's claims against the landlord and I dismissed the application.

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: October 20, 2016

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Residential Tenancy Branch

