



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNL, OLC

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated November 22, 2016
- b. An order cancelling the two month Notice to End Tenancy
- c. An order that the landlord comply with the Residential Tenancy Act, Regulations and tenancy agreement.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was served on the Tenant by posting on November 24, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by the Tenant was personally served on the Landlord on December 4, 2016.

At the hearing the tenant testified she was not disputing the 2 month Notice to End Tenancy. Further, she vacated the rental unit at the end of December as agreed between the parties. However, she is seeking an order that she was entitled to the equivalent of one month rent under section 51(1) which has been applied to the rent for December 2016. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to withhold the payment of the rent for December to satisfy her entitlement to the equivalent of one month rent under section 51(1) of the Act?

### Background and Evidence

The tenancy began on January 1, 2016 when the parties entered into a one year fixed term tenancy agreement. The tenancy agreement provided that the tenant(s) would pay rent of \$1500 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$775 on November 12, 2015.

In November the landlord served a 2 month Notice to End Tenancy for landlord use of property. On November 24, 2016 the landlord served one month Notice to End Tenancy. The grounds of that Notice are as follows:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
  - put the landlord's property at significant risk

The tenant operated a day care. There was a dispute between the parties relating to parking as from time to time the landlord was denied access to her parking spot on the private driveway because of the tenant's vehicle and those of her clients.

The tenant vacated the rental unit at the end of December by agreement with the landlord.

The landlord takes the position that the Tenant does not have the right to the equivalent of one month rent because of the tenancy ended by the one month Notice to End Tenancy. .

### Analysis:

Section 51 of the Residential Tenancy Act provides as follows:

#### **Tenant's compensation: section 49 notice**

**51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the

effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

I do not accept the submission of the landlord that the tenant is denied the benefit of the equivalent of one month rent because the tenancy ended by the one month Notice to End Tenancy for cause. The right of the tenant to receive the benefit of the equivalent of one month rent is triggered by the service of the 2 month Notice. The tenant accepted the 2 month Notice and moved out at the end of December with the agreement of the landlord. The service of the one month Notice if valid could result in the ending of the tenancy earlier than what was provided in the 2 month notice. However, the Act does not provide that it denies the tenant's right to the equivalent of one month rent. In this case the tenant moved out at the end of December with the landlord's agreement.

### Conclusion

In conclusion I determined the tenant is entitled to the equivalent on one month rent as the landlord served the 2 month Notice to the Tenancy. The tenant has withheld the rent for December as she is entitled to do and it is deemed to have been paid to the landlord as provided under section 51(1.1)

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: January 04, 2017

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Residential Tenancy Branch