



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC FF

### **Introduction:**

Both parties attended the hearing and gave sworn testimony. They confirmed the tenant's Application for Dispute Resolution was served by registered mail. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- (a) A monetary order pursuant to sections 49 for a rent refund as the landlord gave them a Notice to End Their Tenancy for landlord's use of the property and did not provide a free month's rent contrary to section 51.

### **Preliminary Issue:**

The landlord requested the style of cause on the Decision be amended to show his company name and the name of only one tenant as on the lease agreement in evidence. The tenant consented to the amendment. The style of cause is amended as requested.

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

Has the tenant proved on the balance of probabilities that they are entitled to a refund of one month's rent pursuant to a Notice to End Tenancy from the landlord? Are they entitled to recover filing fees for the application?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced September 1, 2014, that rent was \$2200 a month and a security deposit of \$1100 was paid.

The tenant described how on June 27, 2016 the landlord told them he wanted their unit for his son. She considered this a two month notice for landlord's use of the property and arranged to vacate. The tenant considers that they were tricked as the son did not move in and the landlord rented it again instead. The landlord expressed regret in an email to the tenants in October 27, 2016 explaining that after the tenants brought to his attention the necessity of a section 49 Notice on July 7<sup>th</sup> or 8<sup>th</sup> and he reviewed the guidelines in the Act with his son, his son decided he was not going to live there. The tenant gave Notice to End their tenancy on June

27, 2016 to be effective July 31, 2016. The landlord said he offered to withdraw his notice on July 7<sup>th</sup> or 8<sup>th</sup> and to cancel the tenant's Notice and told the tenants they could stay. He states the tenants said they had already found a place and wanted the compensation due under the two month Notice. . He states he does not owe the tenant any compensation. The tenants vacated on July 30, 2016.

Both parties agreed there was never a formal section 49 Notice to End Tenancy served on the tenant. There were texts between the parties but no formal Notice.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

As explained to the parties in the hearing, a Notice to End Tenancy for landlord's use of the property under section 49 of the Act is required to be served on the tenant to trigger the compensation of one free month's rent. Section 49(7) specifically states that a notice under that section must comply with section 52 in form and content. Section 52 sets out the requirements for the form and 52(e) provides that when it is given by a landlord, it must be in the approved form.

I find text messages are not the approved form and the tenants never received a legal section 49 Notice to End Tenancy. Section 51(1) states a tenant who receives a notice to end tenancy under section 49 is entitled to receive from the landlord ...an amount that is equivalent to one month's rent (emphasis mine). Although the tenant feels aggrieved at the way the landlord handled the situation and wanted to continue arguing her case, I find the Act is clear that to have entitlement to compensation, the tenant must receive the formal section 49 Notice and she did not. I dismiss the application of the tenant in its entirety.

### **Conclusion:**

I dismiss the application of the tenant in its entirety without leave to reapply and I find she is not entitled to recover filing fees for her 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: May 04, 2017

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Residential Tenancy Branch