



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: RR MNDC FF

### **Introduction**

Both parties attended the hearing and gave sworn testimony. The tenant provided evidence that she had served the landlord with the Application for Dispute Resolution by registered mail and the landlord agreed he had received it as stated. I find the documents were served pursuant to section 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) An Order to refund one month's rent pursuant to sections 49, and 51;
- b) To obtain compensation for work performed and clothing torn due to negligence of the landlord;
- c) Compensation for moving costs and a TV Bracket; and
- d) To recover the filing fee for this application.

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

Has the tenant proved on the balance of probabilities that she is entitled to a refund of rent pursuant to section 51 and for other compensation as claimed and to recover the filing fee?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenant asks for a refund of \$1200 for one month's rent pursuant to section 50 of the Act. She said her tenancy was ended because the landlord had his son moving into her unit. She said he emailed her and provided her with a Mutual Agreement to End Tenancy which she refused to sign.

The landlord pointed to the fixed term tenancy agreement in evidence. It provides that the tenancy commenced February 1, 2016 on a fixed term to January 31, 2017, rent was \$1200 a month and a security deposit of \$600 was paid. There was no box checked to indicate it was to be continued on a month to month and no box checked that vacant possession was required at the end. The landlord said they discussed the lease initially and decided that they would decide near the end of the lease if there was going to be a renewal. The tenant said they discussed giving each other two months notice of their intentions to renew or not at the end of the lease. On December 29, 2016, she received an email from the landlord telling her that she would have to vacate by February 28, 2017. She emailed back that she would leave by January 31, 2017 but then decided to stay until February 19, 2017.

The relevant portion of the email from the landlord reads that his son is moving back and “in light of this, will not be renewing your lease. I want to give you adequate notice that the last day for your tenancy will be February 28, 2017...PS I will put in your mailbox tomorrow 2 copies of the End of Lease Agreement”.

The tenant also requests \$542.50 for her labour for 5 weeks of watering exotic orchids of the landlord's wife. She said the wife asked her if she would like a job and she agreed. No terms or compensation were discussed but she assumed it was a job and she would be paid. The wife brought her back a gift of some food items but never offered to pay her. The landlord said his wife knew the tenant liked flowers and asked if she would water the orchids as a favour. He pointed out that the tenant is good at keeping all emails and nowhere was compensation discussed because his wife never intended to treat this as a job but as a favour.

The tenant also asks \$44.78 for the cost of new pants ripped by a broken flower pot left in the walkway from her rear entrance. The landlord said the path was 6 feet wide and used to store garbage bins and the pot was with the bins. There was plenty of room to walk around them. He disclaims responsibility for the tenant's lack of attention to where she was walking.

The tenant also claims compensation for moving expenses of \$709.53 for she said due to short notice and it being winter, she had to hire movers instead of having friends help her. She claims compensation for a TV bracket for \$85 which she paid the landlord at move-in. The landlord said he had an offer from some contractors on site to sell him three TV brackets and he offered the tenant one at the reduced price. On December 31, 2015 an email confirms this offer and the landlord states “If you don't feel it is the right one you could use it in the bedroom and if it doesn't work for you I will buy it back from you”. On February 19, 2016, the landlord said the tenant should have let him know in the beginning if it wasn't suitable and the price had included labour to install it. It seems the cost of the bracket was \$55 and \$31.66 for installation (\$95/3). The tenant said she eventually sold it for \$10 as it did not move sufficiently for viewing her TV.

The tenant also asks for costs of \$18.90 for registered mail for service.

In evidence is the tenancy agreement, emails, a list of the monetary claim, statements of the parties and registered mail receipts. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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**Analysis:**

Sections 49 and 51 compensation:

I find section 51 of the Act states:

- *A tenant who receives a notice to end tenancy under section 49 (landlord's use of the property) is entitled to receive from the landlord ...an amount that is equivalent of one month's rent payable under the tenancy agreement.*

Section 52 of the Act provides:

- *In order to be effective a notice to end tenancy must be in writing and must (e) when given by the landlord, be in the approved form.*

I find the weight of the evidence is that no section 49 Notice was completed or served by the landlord. Both parties agreed their discussion was by email. According to section 51 above, the one month compensation is triggered by the landlord's service of the section 49 Notice which must be in the approved form according to section 52. I find the tenant not entitled to the compensation claimed. I dismiss this portion of her claim.

Furthermore, I find she had a fixed term lease which legally ended without agreement on renewal. I find the landlord gave her notice on December 29, 2016 that he was not renewing the lease but he extended the move-out date to February 28, 2017. I find no grounds for awarding her moving costs as I find the landlord acted legally and according to the lease contract with her. I dismiss her claim for moving costs.

In respect to the claim for compensation for work performed and clothing damaged, I find awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

**Director's orders: compensation for damage or loss**

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the *Act* does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the *Act*, the regulations or a tenancy agreement.

In respect to the tenant's claim for labour for watering orchids, I find insufficient evidence of any agreement for reimbursement. I dismiss this portion of her claim.

Regarding her claim for clothing, I find insufficient evidence that this was caused through act or neglect of the landlord. The landlord said the broken pot was with the bins and there was lots of walking room around it. I find the tenant's photograph does show walking room between it and the edge of the walkway so I find insufficient evidence to support her claim. I dismiss this portion of her claim.

In respect to her claim for compensation for the TV bracket, I find the weight of the evidence is that the landlord told her by email on December 31, 2015 she could return it for refund if it did not suit her. He mentioned no time limitation. Considering she had just moved into the unit and he was away for a time, I find it reasonable that she tried to return it one and a half months after move-in. I find she is entitled to compensation for the TV bracket that did not suit. Since she resold it for \$10, I find her entitled to recover \$75 of the \$85 she paid the landlord. I find section 72 of the Act limits recovery of costs of arbitration to recovery of the filing fee. Therefore I find the tenant not entitled to recover registration costs.

**Conclusion:**

I find the tenant entitled to a monetary order for \$75 for the reasons stated above and to recover only \$50 of her filing fee due to her limited success for a total of \$125 in a monetary order. I dismiss the balance of her Application without leave to reapply.

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: June 15, 2017

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Residential Tenancy Branch