



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC FF

### **Introduction**

Only the tenant attended and gave sworn testimony. He said the Application for Dispute Resolution was served by registered mail on July 12, 2017. It was unclaimed by July 23, 2017 after several notices were left and was returned to him. I find the Application was legally served pursuant to section 89 of *The Residential Tenancy Act* (the Act) for the purposes of this hearing. The tenant applies pursuant to sections 49 and 51 of the Act for compensation of one month's rent.

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

Is the tenant entitled to the refund of one month's rent and to recover the filing fee?

### **Background and Evidence**

Only the tenant attended although the landlord was served pursuant to the Act. The tenant said his tenancy started April 1, 2013, rent of \$900 was payable on the first of each month and a security deposit of \$450 was paid.

The landlord sent a letter dated May 25, 2016 to the tenants stating it was their two month notice to vacate the property by July 31, 2016. She gave them no free month's rent as the tenant alleges is his right under the Act for this kind of notice. He pointed out in a previous hearing the arbitrator had said that they were entitled to a free month's rent based on a two month notice.

### **Analysis**

I find section 51(1) of the Act states *A tenant who receives a notice to end tenancy under section 49 (landlord's use of property) is entitled to receive from the landlord ...an amount that is equivalent of one month's rent payable under the tenancy agreement.*

Although the tenant contended he received a two month notice, I find a section 49 Notice was not issued. Even if he and the landlord believed it was a section 49 Notice, I

find it was not a legal Notice. Section 52 of the Act specifically states a Notice to End Tenancy (52 (e)) when given by a landlord must be in the approved form. I find a letter issued by the landlord is not in the approved form. Therefore compensation under section 51 of the Act is not applicable.

In respect to the other arbitrator's decision, I note the issues in it were compensation for utilities and the refund of the security deposit. The Notice to End Tenancy was not an issue and may not have been in evidence. She noted the tenants had moved following the issuance of a two month notice to end tenancy but she did not say she had the Notice in evidence or had the opportunity to examine it. In any case, I am not bound by previous arbitrators' decisions. As stated, the weight of the evidence is that the tenants were not served a section 49 Notice to End Tenancy and legally had the option not to vacate in response to the letter as it had no legal authority under the Act.

### **Conclusion**

I dismiss the application of the tenant in its entirety without leave to reapply. I find they are not entitled to recover the filing fee due to lack of success.

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: September 21, 2017

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Residential Tenancy Branch