



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, O

### Introduction

This hearing was convened by conference call in response to a Tenant's Application for Dispute Resolution (the "Application") for monetary compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement. The Tenant applied for "Other" issues, namely the request for monetary compensation.

The Tenant appeared for the hearing with his mother who was there to assist the Tenant and provide evidence as a witness. The Co-Landlord (the "Landlord") appeared on behalf of the Landlord named on the Application. All testimony was given under affirmation.

The Landlord confirmed receipt of the Tenant's Application but was not sure that he had received all of the Tenant's documentary evidence as it had been served in separate submissions. I allowed the Tenant to rely on his documentary evidence but asked the Landlord to alert me to any document that he may not have been served so that I could deal with that issue if it arose during the hearing, which it did not. The Tenant confirmed receipt of the Landlord's 24 pages of evidence served on him by registered mail prior to this hearing.

The hearing process was explained and no questions as to how the proceedings would be conducted were asked. Both parties were given the opportunity to present evidence and make submissions to me. The Tenant gave evidence for 90 minutes of the 120 minute hearing. During this time, the Tenant had to be continually cautioned to provide relevant evidence and factual details as he consistently caught himself providing extensive details on matters not related to the claims or the questions being asked. Therefore, not all of the Tenant's extensive testimony and evidence given has been reproduced in this Decision, which only contains the relevant evidence.

### Issues to be Decided

- Did the Landlord illegally end the tenancy?

- If so, is the Tenant entitled to monetary compensation for moving expenses and the subsequent losses claimed?

### Background and Evidence

The Tenant submitted a signed tenancy agreement for a one bedroom unit with shared common areas which started on March 27, 2017. Rent of \$675.00 was payable on the first day of each month. The Tenant paid a security deposit of \$337.50.

The Tenant testified that he had signed the tenancy agreement and moved into the rental unit on April 1, 2017. The tenancy agreement shows that the term was fixed from March 27, 2017 ending on May 31, 2017.

The tenancy agreement shows that at the end of the fixed term, the tenancy ends and the Tenant must move out of the rental unit. The Landlord and Tenant initialed the boxes acknowledging this term of the agreement.

In addition, the Landlord handwrote on the agreement under the length of tenancy that at the end of the fixed term the tenancy may continue for another fixed length of time provided that the parties hereto have entered into a new written tenancy agreement two months prior to the expiry of the tenancy agreement.

The Landlord also handwrote *"If Tenant(s) have not entered into a new written tenancy agreement prior to the expiry of this fixed term tenancy agreement, the Tenant(s) must move out complete with all their belongings by 1:00 p.m. on the last day of the tenancy."* I also noted that the Landlord had crossed out the provision that the tenancy may continue on a month to month basis.

The Tenant testified that while he had signed and initialed the fixed term tenancy agreement, he found the terms written in by the Landlord as to what was going to happen after the tenancy was to end, confusing. The Tenant submitted that while he had asked for a short term rental, it was never his intention to enter into a fixed term of two months but rather a longer period because that is what he had indicated on his intent to rent form.

Therefore, the Tenant disputed whether the Landlord was able to end the tenancy for the fixed term end date of May 31, 2017 and suggested that it should have continued on a month to month basis. The Tenant testified that when he raised the issue of the fixed term end with the Landlord, the Landlord informed him that he would have to vacate the rental unit at the end of May 2017.

The Landlord disagreed with the Tenant's interpretation of the tenancy agreement explaining that the terms signed and initialed by the Tenant made it clear that it was only intended for two months because it had already been rented to another renter for June 2017 onwards. The Landlord testified that the Tenant was informed of this and the agreement was not confusing. The Landlord stated that the handwritten terms were only inserted with the agreement by the parties and sought to further clarify that this was not a continuing month to month tenancy.

The Tenant explained that because the Landlord then accepted his rent for May 2017, this entitled him to be at the rental unit until the end of May 2017. However, the Tenant testified that the Landlord forced him into leave the rental unit earlier. The Tenant explained that the Landlord slipped multiple notes under his door with places he could rent, and provided this into evidence.

The Tenant testified that he informed the Landlord that he had no obligation to leave the rental unit but in an effort to cover all of his bases, he started to look for another place to rent. The Tenant stated that he paid \$100.00 as a deposit to secure another suite and then started the process of moving out.

The Tenant struggled to provide accurate and consistent dates of the order of events, but clarified that on May 3, 2017 he verbally agreed over the phone with the Landlord that he would move to the new suite before the end of May 2017 on the proviso that the Landlord pay for all expenses related to him having to move earlier. The Tenant was unable to clarify exactly what amounts were agreed and what they related to.

The Tenant stated that on May 3, 2017 he received a note from the Landlord stating that they would be coming to the rental unit to complete a move-out condition inspection of the rental unit at 1:00 p.m.

The Tenant testified that he called the Landlord and stated that he needed more time to get his belongings out of the rental unit and start the process of moving out. The Tenant stated that on May 6, 2017 he packed some of his belongings with a friend into a moving van and took them to the new suite. However, the new landlord refused to honour the tenancy and the Tenant was left homeless.

The Tenant testified that since he had paid for May 2017 rent for the rental unit, he returned to go back and continue occupancy of it, at which time he found the Landlord had changed the locks and had removed the remainder of his personal belongings.

The Tenant stated that he still had a very expensive laptop and bedding in the rental unit and the Landlord had no right to change the locks. The Tenant testified that it was only when he returned did the Landlord give him \$881.86 for the pro-rated amount of rent for May 2017 and the return of his security deposit.

The Tenant claims a total of \$2,000.00 which comprises of moving expenses, postage costs, takeout food costs, loss of property, loss of a deposit to secure the new suite; and the return of one month's rent which the Tenant claims was held hostage because the Landlord would have had to give a two month notice to end the tenancy properly. Apart from the \$100.00 fee to secure the new suite, the Tenant provided no receipts into evidence to verify the losses being claimed.

The Landlord disagreed with the Tenant's version and interpretation of the events. The Landlord explained briefly that the Tenant had been sent suggestions for other rentals because the Tenant was getting stressed about having to vacate the rental unit pursuant to the fixed end date of the tenancy agreement. The Landlord asserted that this was not forcing the Tenant out of the rental unit.

The Landlord explained that as an alternative to the Tenant having to vacate at the end of May 2017, they offered to allow the Tenant to leave the tenancy early and that they would give the Tenant his security deposit and prorated rent for anytime he was not occupying the rental unit as the rent for May 2017 had already been paid.

The Landlord testified that on May 2, 2017 they were notified by the Tenant that he had found another place to go to for May 3, 2017. The parties provided a Shelter Information document into evidence between the Tenant and the new landlord for a tenancy to start on May 3, 2017.

The Landlord explained that as a result, they slipped a note through the Tenant's door informing that they would be coming to the rental unit at 1:00 p.m. that day in order to: complete the move-out condition inspection; give the Tenant the agreed compensation; and then take possession of the rental unit. The Landlord testified that the Tenant agreed to this date and time.

However, the Landlord stated that the Tenant failed to appear at the scheduled time on May 3, 2017. Therefore, they sent the Tenant another letter stating that they would do the move-out inspection on May 4, 2017, for which the Tenant again failed to appear.

The Landlord testified that they met with the Tenant on May 6, 2017, where the Tenant signed the move-out condition inspection report and vacated the rental unit leaving the door open. The Landlord provided the move out report which shows the Tenant's signature and consent to the return of his security deposit and the prorated amount of rent which was subsequently cashed by the Tenant.

The Landlord disputed the Tenant's evidence that the rental unit was left with a laptop, bedding or any other items that would indicate the rental unit had not been abandoned. The Landlord provided three witness statements from other renters of the rental property who write that they observed the Tenant removing all of his property from the rental unit on May 6, 2017 and announcing that he was leaving for good.

The Landlord testified that on this basis, they changed the locks and the rental unit was provided to the new incoming renter. The Landlord explained that the Tenant appeared back to the rental unit later that day demanding occupation of the rental unit because things had not worked out with the Tenant's new landlord.

The Landlord informed the Tenant that there was nothing he could do as the rental unit had been given to the new renter and that he could not be held liable for the new landlord not honoring their agreed tenancy.

The Tenant disputed the Landlord's evidence and testified that he could call his friend to testify in this hearing that he still had a significant amount of property left behind at the rental unit. The Tenant's mother also testified to this effect. The Tenant stated that while things did not work out with his new landlord he still had a right to return to the rental unit as this tenancy had not been ended.

After the parties had finished providing their evidence, I offered the parties an opportunity to settle this matter between them. However, after a short discussion, the parties were not able to reach any consensus for mutual resolution.

### Analysis

Section 44 of the Act stipulates how a tenancy ends. In particular, Section 44 (1) (b) of the Act states that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. Section 44(1) (c) and (d) of the Act also provide that a tenancy may end if the landlord and tenant agree in writing or if the tenant vacates or abandons the rental unit respectively.

I first turn my mind to the tenancy agreement. I do not agree with the Tenant's interpretation that the tenancy agreement he signed was periodic in nature or that it was going to continue after the fixed end date of May 31, 2017.

The Tenant signed and further initialed the agreement to verify that it was only for a fixed term period of two months. I find this is the biggest factor that satisfies me that this was a fixed term tenancy with an end date. I find that while there was no need for the Landlord to add in additional handwritten terms to re-inforce the fixed term, in my view this did not dilute or change the fact that the fixed term was going to end the tenancy or that it gave any indication that it pointed to a periodic tenancy.

Furthermore, I find the removal by the Landlord of the clause that made reference to the fixed term continuing on a month to month basis, made it clear that this was not to be a continuing tenancy. Therefore, I reject the Tenant's assertion that this was an ongoing tenancy and I find the Landlord had a right to end the tenancy pursuant to Section 44(1) (b) of the Act. Accordingly, there was no requirement for the Tenant to vacate the rental unit or for the Landlord to allow the Tenant to end the tenancy earlier.

However, the evidence presented before me certainly does not convince me that the tenancy was ended illegally by the Landlord. I find the circumstances as to how this tenancy ended are more reflective and characteristic of a mutual agreement to end the tenancy and at best, that the Tenant vacated the rental unit of his own volition.

This is because, I find the parties entered into discussions around ending the tenancy before the fixed term expired. The Tenant provided insufficient evidence that the Landlord forced him to move out of the rental unit. I have examined the Landlord's letter given to the Tenant regarding finding another place to go to. I find the contents seek to simply offer the Tenant alternative rentals; I do not find this is evidence that the Tenant was forced out of the rental unit.

The Tenant provided insufficient evidence that when he vacated the rental unit on May 6, 2017 that he had left a substantial amount of personal property that would have indicated that the rental unit had not been abandoned or vacated. I find the Landlord provided sufficient witness rebuttal evidence to place doubt on the Tenant's witness evidence that he had not removed all of his property and vacated on this date. In this case, I find the Tenant failed to meet the burden to prove this assertion.

A move out condition inspection report is generally completed at the end of a tenancy when the tenant has vacated the property. In this case, the Tenant signed the move out

report on May 6, 2017. This report indicates that no personal property was left behind and the Tenant signed for the return of his security deposit and the compensation that was eventually paid to him. Based on this evidence and the circumstances of this case, I find that when the Tenant accepted monetary compensation for the time he was not going to be residing at the rental unit and the rental unit was vacated, this signaled the ending of the tenancy in accordance with Section 44(1) (d) of the Act.

In addition, the Tenant presented evidence that he had entered into another tenancy agreement with a new landlord. This was corroborated by the Shelter Information document and a \$100.00 fee paid to secure that tenancy. If that tenancy collapsed or the new landlord failed to honor that tenancy, the Tenant would not have been able to return to the rental unit and attempt to rehabilitate this tenancy. As a result, I am unable to conclude based on the totality of the circumstances presented before me that the Landlord ended this tenancy illegally.

### Conclusion

As the Tenant has not proved any breach of the Act by the Landlord in this tenancy, I dismiss the Tenant's monetary claim in its entirety without leave to re-apply. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 08, 2017

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Residential Tenancy Branch