



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on April 14, 2018 (the "Application"). The Tenant sought \$2,000.00 compensation for monetary loss or other money owed. The Tenant also sought reimbursement for the filing fee.

Both the Tenant and Landlord appeared at the hearing. The hearing process was explained to the parties and neither had questions when asked. Both parties provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The Tenant had not submitted evidence. I addressed service of the hearing package. The Tenant testified she served the hearing package on the Landlord and provided details in this regard. The Landlord testified he never received the hearing package. He said he knew about the hearing because he received an email from the Residential Tenancy Branch (the "Branch") and called in for further information.

I asked the Landlord if he was seeking to adjourn the hearing or if he was prepared to proceed and he said he was prepared to proceed. Given this, I did not find it necessary to determine whether the Landlord was served with the hearing package in accordance with the *Act* and Rules of Procedure and I proceeded with the hearing.

Both parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

### Issue to be Decided

1. Is the Tenant entitled to \$2,000.00 compensation pursuant to section 51 of the *Residential Tenancy Act* (the “Act”)?

### Background and Evidence

The parties agreed there was an oral tenancy agreement and that the tenancy started April 1, 2015. The Landlord testified it was a month-to-month tenancy and the Tenant did not dispute this. The parties agreed rent was \$1,040.00 per month including hydro. Both parties agreed the Tenant vacated the rental unit April 1, 2018.

The parties agreed the Landlord served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the “Notice”) in November of 2017. The Landlord testified that he served the Notice because he was going to use the space.

The Tenant referred to two prior decisions of the Branch in the Application. I reviewed these decisions. Both relate to the Notice. The file numbers are noted on the front of this decision.

The first decision relates to a hearing on January 23, 2018 that dealt with the Tenant's application to dispute the Notice. Nobody appeared for the Landlord. The Arbitrator determined the Landlord had been served with the hearing package. The Arbitrator noted that the Landlord had the onus to prove the Notice and cancelled the Notice given the Landlord had not appeared or provided evidence. The Arbitrator noted that the tenancy continued. At the hearing before me, the Landlord said he was not aware of the January hearing.

The second decision relates to a hearing on March 28, 2018 that dealt with the Landlord's application for an Order of Possession based on the Notice and a monetary order. Nobody appeared for the Tenant. The Arbitrator granted an Order of Possession. At the hearing before me, the Tenant said she received this Order April 11, 2018.

The Tenant testified that, on February 28, 2018, she gave the Landlord one months notice that she was vacating the rental unit. She said she gave notice because the Landlord said he wanted to move into the unit and she was fine with this. I asked the Tenant why she gave notice that she was vacating the unit when she had disputed the Notice and the Notice had been cancelled. The Tenant said she did so because she heard the Landlord wanted to move into the unit and so she decided to move out. The Tenant agreed she gave notice on her own accord and not in response to the Notice

served in November. The Tenant confirmed she understood the Notice had been cancelled at the January hearing.

Both parties testified regarding whether the Landlord used the rental unit for the purpose stated in the Notice once the Tenant vacated. I have not outlined this testimony given my decision below.

### Analysis

Pursuant to section 51 of the *Act*, a tenant is entitled to compensation if a landlord serves them with a Two Month Notice to End Tenancy for Landlord's Use of Property under section 49 of the *Act* and then fails to follow through with the stated purpose for the notice within a reasonable period or for at least six months.

There was no issue that the Tenant was served with the Notice in November of 2017. However, the Notice was cancelled at the January hearing and the tenancy continued. Based on the testimony of the Tenant, I find she gave notice to end the tenancy on February 28, 2018. Based on the testimony of the Tenant, I find she gave notice to end the tenancy on her own accord and not because of the Notice. I note that the Tenant's decision could not have been in response to the Order of Possession issued at the second hearing as it occurred after she gave notice.

Compensation under section 51 of the *Act* is connected to service of a notice to end tenancy under section 49 of the *Act*. In my view, a tenant is only entitled to compensation under section 51 of the *Act* if they vacate the rental unit because of a section 49 notice. I do not accept that compensation is owed under section 51 of the *Act* when a section 49 notice is cancelled and a tenant subsequently vacates the unit on their own accord. This is so even if a tenant vacates the unit based on the Landlord verbally advising them that the Landlord wants to use the space as section 51 of the *Act* is only triggered by service of a section 49 notice.

Therefore, I find the Tenant is not entitled to compensation under section 51 of the *Act* in the circumstances. This does not change even if the Tenant vacated the unit because she heard the Landlord wanted to use it. She had no obligation to vacate the rental unit in February in the absence of a valid section 49 notice. The Tenant chose to end the tenancy and, in my view, the Landlord was permitted to use the rental unit for whatever purpose he wished at that point.

Given the above, the Application is dismissed.

Conclusion

The Tenant is not entitled to compensation under section 51 of the *Act*. The Application is dismissed.

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: June 07, 2018

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Residential Tenancy Branch