



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “*Act*”) for monetary compensation and for the recovery of the filing fee paid for this application.

The Tenant was present for the teleconference hearing, while no one called in for the Landlord during the approximately 21-minute hearing. The Tenant was affirmed to be truthful in his testimony.

The Tenant stated that he sent the Notice of Dispute Resolution Proceeding package and copies of his evidence to the Landlord through registered mail. The Tenant submitted into evidence the registered mail information for each of the packages. The evidence shows that the packages were unclaimed and returned to the Tenant. Despite not being claimed, I find that the Landlord was duly served in accordance with Sections 88 and 89 of the *Act*. I also note that failure to claim mail is not a ground for review under the *Act*.

### Issues to be Decided

Is the Tenant entitled to monetary compensation?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The Tenant presented undisputed testimony on the tenancy. The tenancy began in May 2016 and ended on June 30, 2018, although the Tenant moved out around June 28 or 29, 2018. Monthly rent at the end of the tenancy was \$1,950.00 and a security deposit of \$900.00 was paid at the outset of the tenancy. The Tenant confirmed that he has received the security deposit back.

The Tenant is applying for compensation equivalent to one month of rent in the amount of \$1,950.00. He stated that the tenancy started through a fixed-term tenancy agreement for the period of May 1, 2016 to October 31, 2016. A second fixed-term agreement was entered into for November 1, 2016 to April 3, 2017. A third fixed-term agreement was for the period of July 1, 2017 to December 31, 2017. The final fixed-term agreement was from January 1, 2018 to June 30, 2018. The Tenant submitted the first page of each of the four tenancy agreements into evidence.

Each of the tenancy agreements state that the tenants must vacate at the end of the agreement, unless the parties mutually agree to enter into a new month-to-month agreement, short-term agreement or fixed term of one year. The Tenant stated that he agreed to signing a new fixed-term tenancy agreement each time as he did not want to cause any problems and wanted to stay residing in the rental unit.

The Tenant stated that at the end of each fixed term agreement, the Landlord would decide if a new agreement would be entered into or if the tenancy would end. The Tenant also noted a period of time between the 2<sup>nd</sup> and 3<sup>rd</sup> tenancy agreement in which there was no signed agreement and the tenancy was presumably continuing on a month-to-month basis.

The Tenant stated that the Landlord had advised him that this is how he prefers to handle the tenancy agreements. On May 1, 2018, the Tenant received a text message from the Landlord stating that he needed to talk about the tenancy. Later that week, the parties met to talk, and the Landlord advised the Tenant that he needed the rental unit for his own family's use. Therefore, the Tenant was told that he would have to move out at the end of the current fixed term agreement.

The Tenant submitted that he was not provided with any notice in writing of the tenancy ending and was also not provided with the option to continue living in the rental unit if he chose to do so.

The Tenant provided testimony that he became aware that the legislation had changed to allow fixed term tenancies to roll into month-to-month agreements, with no need to vacate at the end of the fixed term. He also stated that had the Landlord provided a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), that he would be entitled to one month of rent compensation, which is the amount that he has claimed.

### Analysis

Based on the undisputed testimony and evidence of the Tenant, I find as follows:

As stated in *Residential Tenancy Policy Guideline 30: Fixed Term Tenancies*, the legislation regarding fixed term tenancies changed on December 11, 2017. As part of this change, a fixed term tenancy becomes a periodic or month-to-month tenancy if the parties did not enter into a new signed agreement at the end of the term.

This Policy Guideline further states in part the following:

*A vacate clause is a clause that a landlord can include in a fixed term tenancy agreement requiring a tenant to vacate the rental unit at the end of the fixed term in the following circumstances:*

- *the landlord is an individual, and that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.*
- *the tenancy agreement is a sublease agreement*

*The reason for including a vacate clause must be indicated on the tenancy agreement and both parties must have their initials next to this term for it to be enforceable.*

Although there was a vacate clause on the fixed term tenancy agreements, for the final agreement that began January 1, 2018, this clause would not have been enforceable as there was no reason indicated and the clause was not initialled by both parties. As such, at the end of the final fixed term agreement, the parties could have agreed to enter into a new agreement or the tenancy would have continued on a month-to-month basis, unless a notice to end the tenancy had been provided by either party.

As the Tenant stated that the Landlord ended the tenancy due to needing the rental unit for his own use, and as the fixed term agreement did not include a reason for the vacate clause, a Two Month Notice under Section 49 of the *Act* would have been the process for the Landlord to end the tenancy under the *Act*. Pursuant to Section 51 of the *Act*, the Tenant would have been entitled to one month of rent compensation. However, as no Two Month Notice was served, Section 51 does not apply.

However, the Tenant claimed that the Landlord breached the *Act* and had the *Act* been followed, he would be entitled to compensation equivalent to one month of rent.

When a party applies for compensation, *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* outlines a four-part test to determine if compensation is due:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I do find that the Tenant established that the Landlord breached the *Act* with the final fixed term tenancy agreement that did not include an enforceable vacate clause.

However, as stated in the above-noted four-part test and in Section 7 of the *Act*, a party claiming a loss has a duty to mitigate their losses. When the Landlord told the Tenant that the tenancy would end at the end of the final fixed term agreement, the Tenant moved out. As such, it seems that neither party was familiar with the legislation regarding ending a fixed term tenancy.

In order to mitigate any potential losses, the Tenant could have required that a Two Month Notice was served under Section 49 of the *Act* and as a result would have been entitled to compensation under Section 51 of the *Act*. Had the Landlord not been willing to provide written notice to end the tenancy, the Tenant had the option of applying for Dispute Resolution.

I find that both parties have responsibilities under the *Act* and by not enforcing his rights, the Tenant did not take reasonable steps to mitigate any potential loss. As such, I

find that the Tenant did not meet the four-part test and therefore I decline to award any compensation to the Tenant.

As the Tenant was not successful with the Application for Dispute Resolution, I decline to award the recovery of the filing fee.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed, 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: December 12, 2018

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Residential Tenancy Branch