



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

This hearing dealt with a tenant's application for a Monetary Order for compensation payable to tenants in receipt of a *2 Month Notice to End Tenancy for Landlord's Use of Property* pursuant to section 51(1) of the Act. The tenant appeared at the hearing; however, there was no appearance on part of the landlord despite leaving the teleconference call open at least 15 minutes to give the landlord the opportunity to appear.

Since the landlord did not appear, I explored service of hearing documents upon the landlord. The tenant testified that he sent the hearing documents to the landlord via registered mail on August 4, 2018 and the documents were successfully delivered on August 7, 2018. The tenant provided a registered mail receipt, including tracking number, as proof of service. I was satisfied the landlord was duly served with notification of this proceeding.

The hearing was originally scheduled to take place at 1:30 p.m. on December 4, 2018; however, the Residential Tenancy Branch had to reschedule the hearing to December 14, 2018 at 9:30 a.m. The Residential Tenancy Branch staff proceeded to notify both parties of the rescheduled hearing. A message was left for the tenant and a Notice for the rescheduled hearing was emailed to the tenant without issue. Efforts to notify the landlord were as follows: at approximately 9:45 a.m. on December 4, 2018 a Residential Tenancy Branch staff person contacted the landlord via telephone for purposes of advising the landlord of the rescheduled hearing and after identifying herself the landlord hung up on the staff person. The staff person called back and the call went to voice mail; however, the voice mail service indicated the landlord's voice mail was full. A Notice for the rescheduled hearing was emailed to the landlord's email address. In the event the landlord may still try to attend the originally scheduled hearing

on December 4, 2018, another Residential Tenancy Branch staff person called into the that teleconference call but there was no attendance by either party.

Since the landlord was duly served with notification of the tenant's claims and there was no appearance on part of the landlord at either the originally scheduled hearing date or the re-scheduled hearing, I continued to hear from the tenant without the landlord present.

### Issue(s) to be Decided

Is the tenant entitled to compensation under section 51(1) of the Act?

### Background and Evidence

The fixed term tenancy started on June 1, 2017 and was set to expire on June 1, 2018 and then continue on a month to month basis. The tenant paid a security deposit of \$700.00 and was required to pay rent of \$1,400.00 on the first day of every month.

The landlord issued a *2 Month Notice to End tenancy for Landlord's Use of Property* ("2 Month Notice") to the tenant with an effective date of July 31, 2018 and sent it to the tenant via email on May 18, 2018. The tenant received the 2 Month Notice via email and accepted that it was sufficiently served upon him and the tenant did not require that the landlord serve it upon him personally or another way required under the Act. On May 19, 2018, at approximately 4:30 pm., the tenant wrote a 10 day notice to end the tenancy with an effective date of June 1, 2018 and sent it to the landlord via email. The landlord acknowledged receipt of the tenant's 10 day notice by way of an email she sent to him at 11:37 p.m. on May 19, 2018. The tenant explained that the parties had an accepted practice of communicating with each other via email.

On June 1, 2018 the tenant met the landlord at the rental unit and he returned possession of the unit to her. According to the tenant, he informed the landlord that he was entitled to compensation equivalent to one month's rent because the tenancy ended pursuant to a 2 Month Notice. According to the tenant, the landlord indicated that she did not agree because he did not stay until July 31, 2018.

The tenant confirmed that he had paid rent for May 2018 and the landlord did not provide any refund of the rent paid or otherwise give the tenant the compensation he was entitled to receive pursuant to section 51(1) of the Act.

The tenant provided a copy of the 2 Month Notice he received; the 10 day notice he sent to the landlord; a written timeline of events; and an email he had sent to the landlord explaining the compensation provisions.

### Analysis

Based on the unopposed evidence before me, I accept that the landlord issued a 2 *Month Notice to End tenancy for Landlord's Use of Property* pursuant to section 49 of the Act and sent it to the tenant, via email, on May 18, 2018; and; the tenant in turn gave the landlord 10 days of notice to end the tenancy effective June 1, 2018, via email, and the tenancy did in fact end on June 1, 2018 when the tenant returned possession of the rental unit to the landlord.

Documents that are required to be given to another party are to be given in accordance with section 88 of the Act. Section 88 provides for all of the acceptable methods of delivering documents to the other party. Section 88 does not recognize email as an acceptable method of service; however, section 71(2) of the Act provides me authority, as a delegate of the Director, to deem a party sufficiently served with a document even if they were not served in a manner that complies with section 88 of the Act.

Section 71(2) provides as follows:

- (2) In addition to the authority under subsection (1), the director may make any of the following orders:
  - (a) that a document must be served in a manner the director considers necessary, despite sections 88 [*how to give or serve documents generally*] and 89 [*special rules for certain documents*];
  - (b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;
  - (c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

[Reproduced as written with my emphasis underlined]

In this case, the tenant acknowledged that he received the 2 Month Notice via email on May 18, 2018 and receiving the 2 Month Notice via email appears to have been acceptable method of service by to both parties as both parties acted and/or benefited

from service in this manner. In turn, the tenant used email to deliver his 10 days' of notice to end the tenancy to the landlord. The tenant provided evidence that the landlord received the tenant's 10 days of notice on May 19, 2018 and the landlord acted upon it by meeting him at the rental unit to regain possession on June 1, 2018. In these circumstances, I deem both parties to have been sufficiently served with these documents on May 18, 2018 and May 19, 2018 respectively.

Where a tenant receives a 2 Month Notice, the tenant is permitted to end the tenancy earlier than the stated effective date by giving the landlord 10 days of written notice and ending the tenancy early does not affect the tenant's right to compensation payable under section 51 of the Act. I have reproduced section 50 below:

- 50** (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 *[landlord's use of property]* or 49.1 *[landlord's notice: tenant ceases to qualify]*, the tenant may end the tenancy early by
- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
  - (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
- (2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.
- (3) A notice under this section does not affect the tenant's right to compensation under section 51 *[tenant's compensation: section 49 notice]*.

[Reproduced as written with my emphasis underlined]

By virtue of section 50 and 71(2) as described earlier, I find the tenant legally brought the tenancy to an end on June 1, 2018 and the tenant remained entitled to receive the compensation payable to him under section 51 of the Act.

Section 51(1) of the Act provides that a tenant in receipt of a 2 Month Notice is entitled to compensation equivalent to one month's rent. The compensation may be received

by way of a refund from the landlord or by the tenant occupying the rental without paying rent their last month of tenancy. Section 51(1) provides as follows:

**51** (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

[Reproduced as written with my emphasis underlined]

There is no exemption from the requirement to pay the tenant compensation under section 51(1), (1.1) or (1.2). Since the tenant did not occupy the rental unit and withhold rent for the last month of tenancy, I find the tenant is entitled to compensation equivalent to one month of rent, or \$1,400.00, and he should have been paid this amount on June 1, 2018. However, the landlord failed to do so which has lead to this application. Therefore, I award the tenant \$1,400.00 as requested and I award the tenant recovery of the \$100.00 filing fee he had to pay for this application.

In light of all of the above, the tenant is provided a Monetary Order in the sum of \$1,500.00 to serve and enforce upon the landlord.

### Conclusion

The tenant is provided a Monetary Order in the sum of \$1,500.00 to serve and enforce upon the landlord.

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 19, 2018

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Residential Tenancy Branch