



# 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 the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties and their lawyers attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Both parties confirmed that their lawyers had permission to speak on their behalf at this hearing. The landlord intended to call his sister as a witness, who was excluded from the outset of the hearing, to testify as to why she could not move into the rental unit. I found that it was not necessary for the witness to testify, as the testimony would have been irrelevant to my decision, so she did not testify at this hearing. This hearing lasted approximately 62 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing and the tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence package.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to increase the monetary claim from \$10,837.50 to \$15,300.00, which includes 12 months' rent compensation as per section 51 of the *Act*. The tenant's lawyer stated that she only

claimed for 8 months, since she did not know the law when she filed her claim without his assistance. The landlord did not object to this amendment during the hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to add monetary claims for one month's rent compensation of \$1,275.00 pursuant to section 51 of the *Act*, and travelling expenses of \$702.00 for having to move in order to find a new place after the tenancy ended. The landlord's lawyer objected to these amendments during the hearing, stating that the landlord did not receive any receipts or have a chance to prepare a response to the tenant's claim. I do not find any prejudice to the landlord in amending the tenant's application, as they are all related to the same compensation and reason for ending the tenancy, so any future duplicate proceedings will be avoided.

#### Issue to be Decided

Is the tenant entitled to a monetary order for compensation under section 51(2) of the *Act*?

Is the tenant entitled to recover the filing fee for this application?

#### Background and Evidence

Both parties agreed to the following facts. This tenancy began on February 1, 2018. Monthly rent in the amount of \$1,275.00 was payable on the first day of each month. A security deposit of \$637.50 was paid by the tenant and the landlord returned the full deposit to the tenant. Two written tenancy agreements were signed by both parties.

The landlord said that the tenant vacated the rental unit on September 30, 2018, while the tenant claimed that it was on October 1, 2018.

The tenant seeks compensation under section 51(2) of the *Act* for twelve months' rent, totalling \$15,300.00, one month's free rent of \$1,275.00 pursuant to section 51(1) of the *Act*, and traveling expenses for six ferry roundtrips at \$117.00 each.

The tenant claimed that she signed a second written fixed term tenancy agreement ending on October 1, 2018. The agreement does not indicate what happens at the end of the fixed term as no checkbox is checked off in sections D or E of the agreement. The only information indicated is "owner moving in" where it says "reason tenant must

vacate (required).” No *Regulation* section number is indicated in the appropriate area. The landlord’s and tenant’s initials are indicated beside the area if box “E” is checked off. A copy of this second tenancy agreement was provided for this hearing.

Both parties agreed that the tenant was not given a Two Month Notice to End Tenancy for Landlord’s Use of Property (“2 Month Notice”) from the landlord in the approved form, which is a specific Residential Tenancy Branch (“RTB”) form. The tenant said that because the landlord did not use the rental unit for the stated purpose on the agreement, she is entitled to compensation. She claimed that the landlord told her that he was moving into the rental unit and he re-rented it to new tenants at higher rate of \$1,650.00. The tenant provided emails confirming same.

The landlord disputes the tenant’s application. The landlord testified that he acted in good faith and told the tenant from the beginning of the tenancy that he wanted the unit back for his own use, so that is why he signed the second short fixed term tenancy agreement. He explained that his sister and mother were going to move into the rental unit. He said that his sister told him at the end of October 2018, that she could no longer move, and his mother had a dangerous heart issue. He stated that he had to re-rent the unit after he found out that his family could not move in, in order to minimize his losses.

### Analysis

Sections 49, 51 and 52 of the *Act*, state in part (my emphasis added):

49     (2) *Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be*

          (a) *not earlier than 2 months after the date the tenant receives the notice,*

...

**(7) A notice under this section must comply with section 52 [form and content of notice to end tenancy].**

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.*

...

(2) Subject to subsection (3), **the landlord** or, if applicable, the purchaser who asked the landlord **to give the notice must pay the tenant**, in addition to the amount payable under subsection (1), an amount that is the equivalent of **12 times the monthly rent payable** under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

52 **In order to be effective, a notice to end a tenancy must be in writing and must**  
**(e) when given by a landlord, be in the approved form.**

Since the tenant did not receive a 2 Month Notice in the RTB approved form, as required by sections 49 and 52 of the *Act*, I find that the tenant is not entitled to any monetary compensation under section 51 of the *Act* or for her traveling expenses for moving from the rental unit.

Accordingly, the tenant's application to recover one month free rent of \$1,275.00 as per section 51 of the *Act*, traveling expenses of \$702.00, and twelve months rent compensation of \$15,300.00 as per section 51 of the *Act*, are dismissed without leave to reapply.

As the tenant was unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

The tenant's entire application 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: April 04, 2019

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Residential Tenancy Branch