



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR   MNR   FF

### **Introduction:**

Only the tenant spoke at the conference call at 10:30 a.m. and said he did not know why the landlord was not in attendance. After hearing from the tenant, I concluded the conference and then discovered from the Telus system that the landlord was now on the conference line but had not spoken. He said he had heard what the tenant said. At that time, I heard the landlord's submissions also. The tenant provided evidence that they served their Application for Dispute Resolution personally to the landlord. I find the documents were sufficiently served pursuant to section 71 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- (a) To cancel a Notice to End Tenancy for unpaid rent;
- (b) Compensation pursuant to sections 49, 50 and 51 for a rent refund as the landlord required the tenant to vacate the property and did not provide a free month's rent contrary to section 51; and
- (c) Recovery of the filing fee for this application.

### **Issue(s) to be Decided:**

Has the tenant proved on the balance of probabilities that they are entitled to a refund of one month's rent? Are they entitled to recover filing fees for the application?

### **Background and Evidence:**

Both parties attended the hearing. They were separately given opportunity to be heard, to present evidence and to make submissions as the landlord dialed into the conference late and did not speak so the tenant and I were unaware he was in the conference. It is undisputed that the tenancy commenced January 21, 2018 on a fixed term lease to January 21, 2019 and month to month thereafter. Rent was \$1400 a month and a security deposit of \$700 was paid.

The tenant said he got emails from the landlord saying that he should move out because his son wanted to occupy the unit. He provided the emails in evidence. He

said he assumed he had to move and took a free month's rent in February. However, he never got an official two month Notice to End Tenancy pursuant to section 49 of the Act and the landlord served him a 10 Day Notice to End Tenancy on February 22, 2019 for \$1400 of unpaid rent in February. He vacated on March 20, 2019 and applied to cancel the 10 Day Notice. He has not received his security deposit refunded but has not provided his forwarding address in writing to the landlord.

English is the landlord's second language and he had some trouble understanding the procedure but he explained that the tenant had told him he lost his job and he had suggested his (the landlord's) son could move into the unit. He said the tenant left owing him rent for February, for utilities and some damages. I explained to him that he needs to file an Application to claim for money that he believes the tenant owes and he must file this within 15 days of receiving the tenant's forwarding address in writing or the tenant will be entitled to twice the security deposit back according to section 38 of the Act. I suggested that he consult a relative to help him with the procedure after he gets this decision.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

The ***Residential Tenancy Act*** provides in section 51(1) that a tenant who receives a Notice to End Tenancy under section 49 for landlord's use of the property is entitled to receive the equivalent of one month's rent. I find the tenant never received a Notice under section 49 of the Act. He only received emails from the landlord regarding the possible use of the suite by his son. Section 52 (e) of the Act requires that any notice given by the landlord must be in the approved form. Since the tenant never received a Notice under section 49 of the Act, I find he is not entitled to compensation pursuant to section 51(1) which is triggered by a Notice under section 49. I dismiss the application of the tenant.

Since he has vacated already, I dismiss his Application to cancel the 10 Day Notice to end tenancy for unpaid rent. As explained to the landlord, the landlord may make an Application to claim compensation for unpaid rent, utilities and any damages that may be proved. As I told him, this Application must be filed within 15 days of receiving the tenant's forwarding address in writing to avoid the doubling of the security deposit according to section 38 of the Act.

### **Conclusion:**

I dismiss the application of the tenant in its entirety without leave to reapply and I find he is not entitled to recover filing fees for his application due to lack of success.

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 09, 2019

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Residential Tenancy Branch