



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

MNDCT MNSD

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- A return of the security and pet damage deposit pursuant to section 38; and
- A monetary award for damages or loss pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant was represented by counsel who made submissions on their behalf.

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the respective materials. Based on the evidence I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

At the outset of the hearing the tenant withdrew the portion of their application seeking a return of the security and pet damage deposit as that issue had already been conclusively determined in a previous hearing.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

### Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, correspondence, invoices, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

There have been several previous hearings regarding this tenancy under the file numbers on the first page of this decision.

This tenancy began on May 1, 2017 and ended on October 15, 2017 when the tenant vacated the rental unit. Monthly rent was \$900.00 payable on the first of each month

The parties submit that this tenancy ended by way of a 2 Month Notice to End Tenancy for Landlord's Use of Property. The tenant did not submit a copy of a 2 Month Notice into evidence. The tenant submitted into documentary evidence correspondence from the landlord which they say was included with the 2 Month Notice and screenshots of conversations with the landlord where a 2 Month Notice is referenced.

The tenant submits that the landlord did not provide compensation in the amount equivalent to one month's rent in accordance with section 51(1) of the Act. The tenant submits that the reason provided on the 2 Month Notice for the tenancy to end was that the landlord intended to occupy the rental unit. The tenant submits that the landlord did not occupy the rental unit in a reasonable period of time and instead performed renovations on the rental unit for an extended period of time.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant submits that a 2 Month Notice to End Tenancy for Landlord's Use was issued and that the landlord has failed to provide compensation in the amount equivalent to one month's rent pursuant to section 51 nor did they accomplish the stated purposes for the tenancy to end in a reasonable period of time.

While the parties do not dispute that there was a 2 Month Notice issued and there are peripheral documents which make reference to the notice, I find that in the absence of the actual 2 Month Notice I am unable to make a determination as to whether the 2 Month Notice complied with the form and content requirements of section 52 of the Act.

In the absence of documentary evidence I am unable to make a finding that a valid and effective 2 Month Notice was issued. While counsel made persuasive submissions regarding the consequences had the landlord not accomplished the purposes set out in a 2 Month Notice, I find that there is insufficient evidence of the initial notice. I find that cover letters and text conversations are insufficient to establish that there was a valid 2 Month Notice completed in accordance with the Act.

In the absence of a 2 Month Notice, I am unable to find that there has been a violation of the Act, regulations or tenancy agreement flowing from the issuance of the notice. I find that in the absence of the 2 Month Notice the tenant has not met their evidentiary burden to show on a balance of probabilities that there has been damages and loss flowing as a result of a violation on the part of the landlord. Consequently, I dismiss the tenant's application.

### Conclusion

The tenant's 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: July 5, 2019

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Residential Tenancy Branch