



# 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 section 67 of the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

### **Issues(s) to be Decided**

Is the tenant entitled to a monetary order for compensation for monetary loss or money owed under the *Act*, regulation, or tenancy agreement?

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

### **Background and Evidence**

This month-to-month tenancy started approximately 5 years ago, and ended on or about February 1, 2019. Monthly rent was set at \$764.00, payable on the first day of the month.

The landlord served the tenant with a 2 Month Notice to End Tenancy on November 30, 2018 providing the following reason:

*“All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.”*

The tenant disputed the 2 Month Notice on December 3, 2018, and a hearing was held on January 14, 2019. The Arbitrator cancelled the 2 Month Notice in the decision dated January 14, 2019, and the 2 Month Notice was no longer in effect as of that date. The Arbitrator ordered that the tenancy continue until ended in accordance with the *Act*.

The tenant testified that she had moved out anyway, as she had already paid a deposit and had secured a new place. The tenant testified that she was concerned that the landlord was ending the tenancy, and she took precautions by finding a new place to live. The tenant could not confirm in the hearing when she had paid the deposit to the new landlord.

The tenant is applying for the following compensation as she feels that she had moved out after being served a 2 Month Notice, and the landlord did not sell the property as stated on the 2 Month Notice.

<b>Item</b>	<b>Amount</b>
Moving Costs	\$1,100.00
New Rent	10,200.00
Hydro Cost	981.96
Gas Cost	1,008.36
Internet Cost	407.52
Cable Costs	1,020.00
<b>Total Monetary Order Requested</b>	<b>\$14,817.84</b>

The landlord testified that the tenant gave him notice after the hearing that she was moving out despite the fact that the Arbitrator had ruled in her favour, and the 2 Month Notice was no longer in effect. The landlord included the message in his evidence package that reads:

*“Hi...I just wanted to let you know that, even though the arbitration ruled in my favor, I am still moving out February 1<sup>st</sup> since I have gone through the trouble of having to locate a new place and having already paid the deposit”.*

The landlord testified that although the purchaser had paid a deposit, and had intended to purchase the home as indicated on the 2 Month Notice, because the tenant had disputed the 2 Month Notice and won, the purchaser had requested their deposit back and cancelled the deal . The landlord included the correspondence from the buyer dated January 14, 2019, as well as the Contract of Purchase for Sale that noted a completion date of February 28, 2019.

### **Analysis**

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

#### ***Liability for not complying with this Act or a tenancy agreement***

**7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

The tenant applied for compensation relating to a tenancy that had ended after the tenant was issued a 2 Month Notice to End Tenancy under section 49 of the *Act*.

A tenant may be entitled to compensation under section 51 of the *Act* as stated below if an Arbitrator finds that the landlord failed to comply with the *Act* as stated below:

**Tenant's compensation: section 49 notice**

**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.

(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.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
- (b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I have considered the evidentiary materials as well as the sworn testimony in the hearing. I find that although the landlord did serve the tenant with a 2 Month Notice under section 49 of the *Act*, the tenant disputed the 2 Month Notice, and as a result of that hearing, the Arbitrator ruled in her favour, and the 2 Month Notice was cancelled as of January 14, 2019. After that date, the 2 Month Notice was no longer in force or effect, and the tenancy was to continue until ended in accordance with the *Act* and tenancy agreement.

The tenant gave notice to the landlord after that hearing that she would be moving out anyway as she had already found a new place to live, and had paid a deposit. I had reviewed the decision dated January 14, 2019, and there is no indication that the tenant had informed the Arbitrator that she had secured a new place as of the hearing date, and had intended to move out despite the fact that she was still disputing the 2 Month Notice. One can reasonably conclude from the fact that the hearing had proceeded as scheduled, and the fact that the Arbitrator had made a finding after conducting the hearing, that the tenant had made no effort to inform the Arbitrator that she had found a new place, and would be moving out anyway.

I find that the tenant had given notice to the landlord that she was moving out after the 2 Month Notice was already cancelled by the Arbitrator, and the notice was no longer in force or effect. I find that this tenancy had ended on the basis of the tenant's own decision to move out, and not on the basis of the 2 Month Notice, as the 2 Month Notice was cancelled on January 14, 2019.

On this basis, I am not allowing the tenant's application for monetary compensation pursuant to section 51 of the *Act* as the tenant had chosen to vacate the rental suite and moved out after she had disputed the 2 Month Notice, and after the Arbitrator had ruled in her favour, cancelling the 2 Month Notice. This tenancy had ended after January 14, 2019 after that tenant had decided to end it, and not on the basis of a Notice given under section 49 of the *Act*.

Although I am sympathetic to the tenant that she had felt the urgency and pressure to find a new place pending the hearing in the case that the 2 Month Notice was upheld by the Arbitrator, I find that the tenant has failed to provide sufficient evidence to support that the landlord had failed to comply with the *Act* and tenancy agreement. I find that the

losses submitted in her claim were due to her own actions, and not directly due to the landlord's failure to comply with the Act or tenancy agreement. On this basis, the tenant's entire monetary claim is dismissed without leave to reapply.

As the filing fee is normally rewarded to the successful party after a hearing, I dismiss the tenant's application to recover the filing fee.

**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: August 20, 2019

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Residential Tenancy Branch