



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, MNDCT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on August 06, 2019 (the "Application"). The Tenant sought compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant appeared at the hearing. The Landlord appeared at the hearing with A.Z. to assist. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlord confirmed receipt of the hearing package and Tenant's evidence. The Tenant confirmed receipt of the Landlord's evidence. The Landlord did note that there was no Monetary Order Worksheet submitted. The Landlord confirmed she understood the basis for the Application. Given this, I did not go into the Monetary Order Worksheet issue further.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to reimbursement for the filing fee?

### Background and Evidence

The Tenant sought \$35,000.00 in compensation under section 51 of the *Residential Tenancy Act* (the “*Act*”).

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between agents on behalf of the Landlord and the Tenant. The tenancy started September 01, 2014 and was for a fixed term ending August 31, 2015. It included a vacate clause. Rent was \$3,100.00 per month due on the first day of each month. The Tenant paid a \$1,550.00 security deposit.

Both parties agreed the following additional tenancy agreements were entered into:

- September 01, 2015 to August 31, 2016 for \$3,175.00 in rent
- September 01, 2016 to August 31, 2017 for \$3,175.00 in rent
- September 01, 2017 to June 30, 2018 for \$3,380.00 in rent

Both parties agreed these were done by email and that no further RTB forms were completed in relation to these terms.

I asked the Tenant if she was relying on section 51 of the *Act* as the basis for the compensation sought given the comments in the Application and made at the hearing. I read section 51 of the *Act* out to the parties during the hearing. The Tenant confirmed she was relying on section 51 of the *Act* as the basis for the compensation sought.

The Tenant testified that she was never served with a notice to end tenancy issued under section 49 of the *Act*.

I advised the Tenant that section 51 of the *Act* only applies where a tenant has been issued a notice to end tenancy under section 49 of the *Act*. I told the Tenant that if there was some other basis for the compensation request, I would hear her on this.

The Tenant made the following submissions. Other than the original tenancy agreement, the Landlord did not follow the rules including how to end the tenancy. She was told the Landlord was going to do renovations, which is the Landlord's right to do. She was not in a position to demand the proper documentation. The Landlord just did not want renters in the house.

I had raised with the parties that compensation is either set out in the *Act* or that I would apply the test set out in section 7 of the *Act*. The Tenant indicated that she was relying on section 7 of the *Act*.

I asked the Tenant what the breach by the Landlord was. The Tenant testified as follows. The Landlord breached by asking her to move out on the basis of doing renovations and then not completing the renovations. The Landlord put the rental unit up for sale. The Landlord did not have building permits. The Landlord re-rented the house. The Landlord breached by not issuing a notice under section 49 of the *Act* and falsely saying she was going to renovate. The parties never had a proper lease and she was not allowed to go month-to-month.

The Landlord testified as follows. The parties had a nine-month fixed term tenancy and the Tenant agreed to this. The Tenant asked for flexibility in the end date and this was given to the Tenant. It was the Tenant who wanted to vacate. If the Tenant had said she was willing to stay in the rental unit, the Landlord would have let her. It is the Tenant who gave the Landlord June 30, 2018 as the end date of the tenancy. It was the Tenant's decision to move out. The Tenant was never issued a notice under section 49 of the *Act*.

In reply, the Tenant denied it was her decision to leave and referred to a screen shot submitted in relation to the term of the tenancy. She testified that she vacated the rental unit to accommodate the Landlord so the Landlord could renovate.

I have reviewed the evidence submitted; however, I do not find it necessary to outline it here given the decision below.

### Analysis

The Tenant, as applicant, has the onus to prove she is entitled to the compensation sought pursuant to rule 6.6 of the Rules of Procedure.

Section 51 of the *Act* states in part:

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...

[emphasis added]

Section 51 of the *Act* only applies when tenants have been issued a notice to end tenancy under section 49 of the *Act*. The parties agreed the Tenant was not served with a notice to end tenancy under section 49 of the *Act*. Therefore, the Tenant is not entitled to compensation under section 51 of the *Act*.

Section 7 of the *Act* states:

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.

For the Tenant to show she is entitled to compensation under section 7 of the *Act*, the Tenant would have to prove the Landlord breached the *Act*, regulations or tenancy agreement.

Although the Tenant made her concerns about the end of the tenancy clear during the hearing, the Tenant did not point to what section of the *Act* she was relying on other than section 51 of the *Act*. When the Tenant was asked what the breach by the Landlord was in relation to section 7 of the *Act*, the Tenant addressed issues relevant

under section 51 of the *Act*. The Tenant did not point to another section of the *Act* that was breached or explain how such a breach entitled her to the compensation claimed.

I do not accept that the Tenant can claim compensation on the basis that the Landlord should have issued her a notice to end tenancy under section 49 of the *Act*. Parties can agree to end a tenancy and the *Act* does not prohibit a landlord from offering a specific fixed term for a tenancy or from asking a tenant to agree to ending the tenancy. I note that vacate clauses were no longer enforceable as of December 11, 2017, except in specific circumstances. It was open to the Tenant to remain in the rental unit until the tenancy was ended under section 44 of the *Act*. Tenants and landlords alike are expected to know their rights and obligations. The Tenant cannot now claim compensation when she agreed to move out of the rental unit in the absence of the Landlord issuing a notice to end tenancy.

I do not accept that any of the other alleged breaches by the Landlord resulted in the loss claimed which I understand to be related to the Tenant having to move out of the rental unit.

In the circumstances, the Tenant is not entitled to the compensation sought.

Given the Tenant was not successful in the Application, the Tenant is not entitled to reimbursement for the filing fee.

The Application is dismissed without leave to re-apply.

### Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 29, 2019

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Residential Tenancy Branch