



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on December 13, 2019 (the “Application”). The Tenant sought compensation for monetary loss or other money owed.

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties. The parties provided affirmed testimony.

The Landlord provided his correct legal name which is reflected in the style of cause.

It was not clear from the Application on what basis the Tenant was seeking compensation. After a discussion about this with the Tenant, I understood the Tenant to be seeking compensation of one month’s rent under section 51(1) of the *Residential Tenancy Act* (the “Act”) because he was issued a Two Month Notice for Landlord’s Use of Property. The Landlord advised that it was not clear to him that the Tenant was seeking compensation under section 51(1) of the *Act* but that he was fine with proceeding on this issue.

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 testified that he did not receive the Landlord’s evidence. The Landlord testified that he sent the evidence by UPS to the address for the Tenant on the Application. He testified that he sent it May 04, 2020 and it was received May 06, 2020. The Tenant testified that he moved from the address on the Application in December.

I do not find it necessary to address the issue of service of the Landlord's evidence further. All of the Landlord's evidence relates to damage to the rental unit which is not relevant to the issue before me. None of the Landlord's evidence affects the outcome of this decision.

I do note that the Landlord submitted a Monetary Order Worksheet seeking compensation. I told the Landlord at the hearing that I cannot consider this as the Landlord must file his own Application for Dispute Resolution if he believes he is entitled to compensation from the Tenant. I told the Landlord this cannot be considered on the Tenant's Application. The Landlord asked that I send him what he needs to fill out for an Application for Dispute Resolution. I told the Landlord I would not do so. I did explain to the Landlord where to find the paperwork and online application process on the RTB website.

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

I note that it was very difficult to communicate with the Tenant throughout the hearing given a language barrier. I had difficulty understanding the Tenant. It seemed that the Tenant had difficulty understanding me as his answers to questions often did not address the question asked. I asked the Landlord a few times during the hearing if he could have someone assist him or call someone to join the hearing to assist him. The Landlord advised that he could not do so.

#### Issue to be Decided

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

#### Background and Evidence

The Tenant sought \$650.00 in compensation under section 51(1) of the *Act*.

The Landlord testified as follows in relation to a tenancy agreement in this matter. There was no written tenancy agreement. He purchased the home 10 years ago. At that time, the Tenant rented the rental unit from other tenants of the Landlord. The other tenants then vacated, and the Landlord and Tenant entered into a tenancy agreement. It was a month-to-month tenancy. Rent at the end of the tenancy was

\$650.00 per month due on the first day of each month. No security or pet damage deposits were paid.

The Tenant's position on the tenancy agreement was not clear. The Tenant seemed to disagree that there was a tenancy agreement. However, the Tenant agreed he lived at the rental unit for over 10 years and paid rent each month to the Landlord. He agreed the Landlord owns the rental unit. He agreed rent was \$650.00 due on the first day of each month. At points it seemed the Tenant disagreed rent was \$650.00; however, the Tenant sought \$650.00 as one month's compensation in the Application.

In relation to the compensation sought, the Landlord testified as follows. He served the Tenant with a Two Month Notice for Landlord's Use of Property (the "Notice") in September of 2019. The reason for the Notice was that he or a close family member would move into the rental unit. He never gave the Tenant one month's rent under section 51(1) of the *Act*. The Tenant was supposed to move out at the end of November but did not move out until December 03, 2019. The Tenant did not pay for December rent. He is not sure if the Tenant paid September rent. He checked his records and cannot find a payment for September rent. The Tenant did not pay September rent. I understood the Landlord to take the position that the Tenant did not pay September rent because he was issued the Notice.

The Tenant testified that he vacated the rental unit December 05, 2019. The Tenant's position on the Application was difficult to understand. After numerous questions on these issues, the Tenant agreed the Landlord served him with the Notice in September of 2019 and agreed it was served so the Landlord or a close family member could move into the rental unit. I understood the Tenant to be taking the position that he is entitled to \$650.00 as one month's rent because he was issued the Notice.

The Tenant testified that he paid rent for September, October and November. He testified that he paid September rent in cash. The Tenant testified that the Landlord did not give him a receipt for September rent and only gave receipts when the Tenant asked for them.

In reply, the Landlord testified that he gave the Tenant receipts when the Tenant asked for them.

During the hearing, the Landlord referred to File Number 1. I looked at the decision on File Number 1 during the hearing. It was between the parties in relation to the rental unit. It was issued November 26, 2019. The Tenant had an interpreter present. It was

the Tenant's Application for Dispute Resolution to dispute the Notice and dispute a rent increase. There was no issue that there was a tenancy agreement between the parties. It states that the parties agreed the Notice was given to the Tenant in person September 18, 2019. The Notice was upheld, and an Order of Possession was issued. The dispute of a rent increase was dismissed.

### Analysis

I am satisfied based on the prior RTB decision and testimony of both parties that there was a verbal tenancy agreement between the parties.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Tenant, as applicant, who has the onus to prove he is entitled to the compensation sought. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 51 of the *Act* states:

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.

I am satisfied based on the prior RTB decision and testimony of both parties that the Tenant was served with the Notice under section 49(3) of the *Act* in September of 2019.

I am satisfied the Tenant was entitled to receive the equivalent of one month's rent payable under the tenancy agreement under section 51(1) of the *Act*.

The Landlord testified that the Tenant did not pay September rent. The Tenant testified that he did pay September rent. The Tenant submitted rent receipts for October and November rent, but not for September rent.

I am satisfied based on the prior RTB decision that the Notice was given to the Tenant September 18, 2019. I find it unlikely that the Tenant would have withheld September

rent based on being issued the Notice when rent is due on the first day of each month and the Notice was not provided to the Tenant until September 18, 2019.

Although I found the Landlord credible, I did not find his testimony particularly reliable. The Landlord was clearly unaware of the compensation requirement set out in section 51(1) of the *Act*. I read out section 51(1) of the *Act* to the Landlord during the hearing and asked if he agreed he owed the Tenant the one month's compensation. The Landlord replied that he did not know. He then referred to the Tenant staying in the rental unit until December 03, 2019 as a basis for not owing the compensation. It was not until the end of the hearing, when I had heard the Landlord's position and Tenant's position, that the Landlord said he was "not sure" if the Tenant paid September rent. When questioned about this further, the Landlord said his position is that the Tenant did not pay September rent.

Given how his testimony was presented, I am not satisfied the Landlord is sure whether the Tenant paid September rent or not. The Landlord did not submit any evidence showing the Tenant did not pay September rent, such as a rent ledger or 10 Day Notice issued for non-payment of rent.

I acknowledge that this is the Tenant's Application and his onus to prove. I am satisfied based on the testimony of the Tenant that he paid September rent for the following reasons. I did not have concerns about the reliability or credibility of his testimony on this point. I find it unlikely that the Tenant would have withheld rent for September based on the Notice when the Tenant did not get the Notice until September 18, 2019. I find it unlikely that the Tenant had paid rent late and then not paid rent for September in the absence of a 10 Day Notice issued for non-payment of rent or some other documentary evidence to support this. In the circumstances, I find it more likely than not that the Tenant paid September rent.

I am satisfied the Tenant was not given the equivalent of one month's rent under section 51(1) of the *Act*. As stated, the Tenant is entitled to this because he was issued the Notice. The fact that the Tenant stayed in the rental unit until December 03, 2019 does not affect this. If the Landlord feels he is entitled to compensation for the three days in December, it is open to the Landlord to seek compensation through the RTB. This does not change the entitlement of the Tenant to one month's compensation under section 51(1) of the *Act*.

I am satisfied rent at the end of the tenancy was \$650.00. The Tenant seemed to dispute this, but this is the amount he sought as one month's rent in the Application. I am satisfied the Tenant is entitled to \$650.00 under section 51(1) of the *Act*.

### Conclusion

The Tenant is entitled to \$650.00. I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: May 13, 2020

---

Residential Tenancy Branch