



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: MNDCT, FFT

### Introduction

The tenant seeks compensation against their former landlord under section 67 of the *Residential Tenancy Act* (the “Act”). They also seek recovery of the filing fee under section 72 of the Act.

The tenant filed their application on May 13, 2020 and an arbitration hearing was held on August 24, 2020. The tenant and the landlord attended the hearing and were given a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application.

### Issues

1. Is the tenant entitled to compensation as claimed?
2. Is the tenant entitled to recovery of the filing fee?

### Background and Evidence

By way of background, the tenancy started on August 1, 2014 and ended on May 15, 2018. Monthly rent was \$2,100.00 and the tenant paid a security deposit of \$1,025.00, neither of which are in issue in this dispute. The tenancy was initially a fixed term tenancy, later becoming a month-to-month tenancy.

A copy of the written tenancy agreement was submitted into evidence.

On March 17, 2018 the parties signed a Mutual Agreement to End a Tenancy (the “MAET”), a copy of which was also submitted into evidence. The MAET indicated that the parties would agree to end the tenancy on July 1, 2018. Originally, the end of tenancy date was earlier than indicated, but the parties later amended it to July 1.

On May 1, 2018, the tenant, who had since found new accommodations, gave the landlord written notice that she was ending the tenancy effective May 15, 2018. She paid the landlord half of the month’s rent, which, despite the tenant not giving the landlord one month’s notice, the landlord accepted.

The tenant claims that the landlord owes her one month’s rent because, instead of issuing the tenant with a Two Month’s Notice to End Tenancy for Landlord’s Use of Property, he instead used a Mutual Agreement to End a Tenancy document. It was the tenant’s understanding that the latter document is used by landlords to end tenancies when the tenant is a “nice tenant” and the former document is used when a tenant is not a nice tenant.

The landlord argued that he had options for ending a tenancy, and in this case both parties agreed in writing to end the tenancy on July 1, 2018.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

A tenancy can come to an end in one, or more, of 14 ways. These are enumerated in section 44(1) of the Act. One way is where a landlord gives notice to end a tenancy when they intend to move into the rental unit. Another way is when “the landlord and tenant agree in writing to end the tenancy” (section 44(1)(c)). Finally, a tenant may give notice to end a tenancy (sections 44(1)(a)(i), (i.1), (viii), and 44(1)(d)).

There is, I must note, nothing in the Act preventing parties – and, specifically landlords – from mutually agreeing to end a tenancy under section 44(1)(c) of the Act *even when the underlying purpose or intent of a landlord is to occupy the rental unit*. Section 49(1) of the Act, which outlines the requirements for when a landlord ends a tenancy on the basis of intended landlord use, does not preclude a landlord from ending a tenancy by mutual agreement.

It is only under section 49(1), and therefore section 51(1) of the Act, which speaks to the one month's compensation requirements, that a tenancy may be eligible to receive one month's compensation.

In this case, the tenant signed the MAET, effectively rendering any compensation under section 51(1) irrelevant. Had the tenant refused to sign the MAET, and she certainly had that right, then the landlord would have presumably been obligated to issue a notice to end the tenancy under section 49(1). But it is worth repeating: the landlord was not prohibited from ending the tenancy by way of a mutual, written agreement under section 44(1)(c) of the Act.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving her claim for compensation under the Act.

Indeed, it was the tenant who breached both the Act, and the MAET, by not giving the landlord the required one month's notice, which is required under section 45(1) of the Act. If anything, it is the tenant who may have owed the landlord an additional half month's rent. However, given that the two-year limitation period from the date the tenancy ended has now passed, no further application may be made by either party.

### Conclusion

I dismiss the tenant's application, without leave to reapply.

This decision is final and binding and is made on authority delegated to me under section 9.1(1) of the Act.

Dated: August 24, 2020