



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1955 WESTERN APARTMENTS  
INC. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

On May 25, 2020, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “Act”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant and both the Landlords attended the hearing as well. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package and some evidence to the Landlords by registered mail on May 25, 2020. She also stated that she served the Landlords additional evidence by registered mail on June 2, 2020. In her evidence package was a USB containing digital evidence; however, she acknowledged that she did not check to see if the Landlords could view this evidence prior to sending it, pursuant to Rule 3.10.5 of the Rules of Procedure.

Landlord J.M. advised that they did not have time to pick up one of the Tenant’s packages and they did not attempt to view the USB. However, he then stated that they accepted service of the documents. As the Landlords have accepted that they received these packages and were prepared to proceed, I am satisfied that the Landlords were served the Notice of Hearing and evidence packages. As such, this evidence was accepted and considered when rendering this Decision.

Landlord L.M. advised that their evidence was served to the Tenant by hand on September 17, 2020. The Tenant acknowledged that she received this evidence on that date. As this evidence was served pursuant to the timeframe requirements of Rule 3.15 of the Rules of Procedure, I am satisfied that the Tenant was served with the Landlords’

evidence. As such, this evidence was accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on April 7, 2018 and ended when the Tenant gave up vacant possession of the rental unit on May 11, 2019 based on a Mutual Agreement to End Tenancy. Rent was established at \$1,005.00 per month and was due on the first day of each month. A security deposit of \$497.50 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

All parties agreed that the Tenant was served with a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the "Notice") in February 2019. The Tenant advised that many of the other residents of the building jointly disputed this Notice; however, she did not dispute it and accepted the end of the tenancy (the relevant file number is noted on the first page of this Decision). While the Tenant advised that the effective end date of the tenancy on this Notice was April 1, 2019, according to this previous Decision, the effective end date of the tenancy on the Notice was indicated as June 30, 2019.

The Tenant stated that an agent for the Landlords presented her with a Mutual Agreement to End Tenancy (the "Mutual Agreement") and she signed it on March 22, 2019 agreeing that the end of tenancy date would be May 11, 2019. Attached to this

Mutual Agreement was a settlement agreement that the parties agreed to as a condition of mutually ending the tenancy. The Tenant stated that she signed this Mutual Agreement because she believed the renovations the Landlords chose to undertake were necessary and she was under the impression that this settlement agreement was proposed to her on the condition that she not take part in the joint dispute of the Notice. Once she signed this Mutual Agreement, she filled out the Tenant Notice: Exercising Right of First Refusal (the "Right of First Refusal) form and provided it to the Landlords' agent. It is her belief that the Mutual Agreement does not negate the Right of First Refusal.

She advised that she saw the rental unit, in May 2020, as being advertised for rent on an online site. She attempted to contact the Landlords' agent on May 22, 2020 to exercise her right of first refusal; however, this person was no longer reachable. She then coordinated a viewing of the rental unit under a fake name, on or around May 23, 2020. She met with the building manager and viewed the rental unit. The building manager advised her that there were many applicants for the vacant rental unit, and she was given an Application to rent. She conducted research on the company listed as the landlord and determined it to be a fake, unregistered company. It is her opinion that she was never contacted about re-renting the rental unit or given the right of first refusal once the renovations were complete. As a result, she is entitled to compensation in the amount of 12 months' rent, or **\$12,060.00**, pursuant to Section 51.3(1) of the *Act*.

L.M. advised that despite the Notice being served, that same Notice was served to all of the residents of that building, and they were determined to be cancelled and of no force or effect based on the May 24, 2019 previous Decision. As well, this tenancy ended by way of a Mutual Agreement and the *Act* permits for tenancies to end via a buyout, which is what the Tenant agreed to through the settlement agreement. She stated that the Tenant received more compensation through this settlement than what she would have received if the Notice had been upheld. She submitted that they and the Tenant understood that the tenancy ended via the Mutual Agreement, and therefore, the Right of First Refusal did not apply.

She stated that the rental unit was ready for re-rental in June or July 2020 and that it was eventually rented in August 2020. She questioned the Tenant's true intention to rent the unit as she did not mention anything and viewed the unit under a fake name. She stated that the Tenant did not show any intention to rent the unit, but just viewed it in an attempt to seek more money from the Landlords.

The Tenant advised that she was interested in renting the unit; however, she had signed a new, fixed term tenancy agreement on her current residence in March 2020. As the Landlords had stated that the rental unit was available “months prior”, had the Tenant known this, she would not have signed the new fixed term tenancy.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

In this tenancy, Section 44(1)(a)(v) states that the tenancy can end if the Landlords give a notice to end tenancy under Section 49, or if the Landlords and Tenant agree in writing to end the tenancy.

Section 49(6) of the *Act* outlines the Landlords’ right to end a tenancy in respect of a rental unit where the Landlords have all the necessary permits and approvals required by law, and intend in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Section 51.2 of the *Act* states that if the Tenant receives a Notice under Section 49(6) of the *Act*, the Tenant is entitled to give the Landlords the Right of First Refusal form. Furthermore, if the Tenant has given this form, the Landlords must give the Tenant, at least 45 days before the completion of the renovations or repairs, a notice of the availability date of the rental unit, and a tenancy agreement to commence effective on that availability date.

Finally, Section 51.3 of the *Act* states that if the Tenant has given the Right of First Refusal form, the Landlords must pay the Tenant an amount that is the equivalent of 12 months’ rent if the Landlords do not comply with Section 51.2(2) of the *Act*.

When reviewing the totality of the evidence before me, while the Landlords did serve the Tenant a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, even though the Tenant did not dispute this, it was determined that this was not a valid Notice per the May 24, 2019 previous Decision.

Regardless, even if the Notice were not determined to have been cancelled, the effective end date of the tenancy would have been June 30, 2019 at the earliest. The

Mutual Agreement clearly indicated that the parties agreed that the tenancy would end on May 11, 2019 instead. In addition, there is nothing in the settlement agreement noting that the Notice would still be live and that the compensatory requirements of that Notice would still apply. In my view, it is clear that even though the Tenant gave the Landlord the Right of First Refusal form, this tenancy ended by way of the Mutual Agreement negotiated under the terms of the settlement agreement.

As the Notice was cancelled, the Tenant was not given a Notice under Section 49(6) of the *Act*. Therefore, she is not eligible for compensation under Section 51.3 of the *Act*. Furthermore, as the tenancy actually ended through a Mutual Agreement, I do not find that the Tenant is entitled to any compensation under Section 51.3 either. As such, I am satisfied that the Tenant is not entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*. Consequently, I dismiss her claim on this issue in its entirety.

As the Tenant was not successful in her claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

I dismiss the Tenants' Application for Dispute Resolution 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: September 30, 2020

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Residential Tenancy Branch