



# 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 an Application for Dispute Resolution by the tenants for compensation pursuant to section 51 of the Act, and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

### Issue to be Decided

Are the tenants entitled to compensation pursuant to section 51 of the Act?

### Background and Evidence

The tenancy began on February 1, 2019 under a fixed term agreement. Rent in the amount of \$1,200.00 was payable on the first of each month. A security deposit of \$625.00 and a pet damage deposit of \$625.00 were paid by the tenants. The parties entered into new fixed term agreement which began on October 1, 2019 and was to expire on October 1, 2020.

The tenants received a Two Month Notice to End the Tenancy for Landlord's Use of Property on July 27, 2020, with an effective date of September 30, 2020.

On August 20, 2020 the tenants gave the landlord 10 days notice that they would be ending the tenancy on August 31, 2020.

The tenant testified that they did not get a copy of their tenancy agreement and they did not realize they were under a fixed term agreement. The tenant stated that they had no choice but to leave early because of safety issues for their son.

The tenant submits that the date in the Notice was September 30, 2020 and should have been October 1, 2020.

The landlord testified that the tenants were not entitled to end the tenancy earlier because they were under a fixed term and because they did not pay rent for September 2020, that is their compensation under the Act.

The landlord testified that they received a text message from the tenant regarding safety concerns on August 7, 2020. The landlord stated that they responded to that message and address those concerns. The landlord stated they never received any further communication from the tenant on safety issues.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, I am not satisfied that the tenants ended the tenancy for a breach of a material term pursuant to section 45(3) of the Act. The Act requires the tenants to notify the landlord of the breach and then give the landlord a reasonable time to rectify the breach before they can end the tenancy. That is not the case before me.

I am satisfied that the tenants received the Notice and gave the landlord a 10 days notice to end the tenancy pursuant to section 50(1) of the Act. However, the tenants were not entitled to use this portion of the Act as they were under a fixed term agreement. I do not accept the tenants were unaware of this fix term agreement as it was signed by them and this was their second fixed term agreement during this tenancy.

The Residential Tenancy Policy Guideline 30 Fixed Term Tenancies, clearly sets out that a tenant may not during a fixed term, give the landlord a minimum 10 day notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice.

When under a fixed term tenancy, neither party are entitled to give notice to end the tenancy earlier than the expiry of the fixed term, which was October 1, 2020. While I

accept the Notice given to the tenant state the effective date was on September 30, 2020, which was reasonable as that is the last day of the month.

However, even if the effective date stated in the Notice was earlier than permitted under the Act, such in this case by one day. Section 53 of the Act automatically corrects that date to the earliest date allowed under the Act which would have been October 1, 2020.

As the tenants were not entitled to end the tenancy until October 1, 2020 the date the fixed term agreement expired. I find the tenants are responsible to pay rent for September 2020. As rent was not paid for September 2020, I find any compensation the tenants were entitled to receive was applied to the rent owed, I find that this constitute their compensation under section 51 of the Act as the tenants were entitled to withhold rent for the last month of their tenancy as compensation. Therefore, I dismiss the tenants' application.

### Conclusion

The tenants' application is dismissed.

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: January 27, 2021

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Residential Tenancy Branch