



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC, FFT

### Introduction

This hearing originally convened on May 10, 2021 and was adjourned to September 14, 2021. This decision should be read in conjunction with the May 10, 2021 Interim Decision. This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant, landlord A.L. and counsel for landlord A.L. attended the first hearing. hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant, all the landlords and counsel for the landlords attended the second hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision.

In the Interim Decision the tenant was ordered to re-serve the landlord with the tenant's application for dispute resolution and evidence. Both parties agree that the tenant personally re-served the landlords with the above documents at the subject rental

property on May 10, 2021. I find that the landlords were served in accordance with the May 10, 2021 interim decision and in accordance with section 89 of the *Act*.

### Issues to be Decided

1. Is the tenant entitled to a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

### Background and Evidence

Both parties provided testimony during the hearing. I will only address the facts and evidence which underpin my findings and will only summarize and speak to the points which are essential in order to determine the tenant's claim. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agreed to the following facts. This tenancy began on December 1, 2019 and ended on October 25, 2020. Monthly rent in the amount of \$1,100.00 was payable on the first day of each month. A security deposit of \$550.00 was paid by the tenant to the landlords. The landlords returned the tenant's security deposit to the tenant on October 25, 2020.

Both parties agree that on September 17, 2020 the landlords messaged the tenant the following:

Good evening [Tenant],

We hope this letter finds you and your family safe and healthy. This year, undoubtedly, has been life-changing times for everyone.

Sadly, the past few months have been really difficult for our family, some of which my father shared with you. This is the main reason I spent most of my

time with him in [location name] instead of coming to [location name] this summer.

This time has become even more difficult as we had to make a difficult decision. As we know, you're a very hard worker, travelling throughout the province for work. You have always been on time on your rent – many times paying it in advance. It is with mixed emotions we have decided to give you notice to move. Further to the phone call, my dad advised me to send you a note in writing.

I would normally complete a Notice to End Tenancy but that document does not allow me to comment on how great of a tenant you have been. You have been an amazing tenant - always respectful, cooperative and in-part, like family. Over the course of the year, you assisted with resolving various issues, some of which involved other tenants and this was sincerely appreciated by my family and I. If you require additional documents to receive funding from anywhere, please let me know.

I hope this is sufficient in providing you notice to vacate the suite by October 31<sup>st</sup> and I hope we're able to either do work or have you as a tenant again in the future.

If you have any questions, or require a reference, feel free to reach me on my cellphone at [cellphone number provided].

Respectfully,  
[Landlord A.L.]

The tenant testified that he did not agree with the notice to end tenancy, which was not provided on Residential Tenancy Branch forms, but decided to move out in accordance with the above notice because he did not want to get caught moving in the winter. The tenant testified that he asked the landlords for the proper forms from the Residential Tenancy Branch, but the landlords did not provide them. Landlord A.J. testified that the tenant only asked for Residential Tenancy Branch forms after he moved out.

The tenant testified that during the move he pinched a nerve in his back and was not able to work for 3-4 months. No medical evidence to support this testimony was entered into evidence. No loss of income records were provided.

The tenant testified that after he moved out he attended at the subject rental property and found that the landlord had not moved in and that the subject rental property had been rented out to others.

Landlord A.J. testified that he moved into the subject rental property in November of 2020. Both parties agree that the tenant personally served the landlords at the subject rental property on May 10, 2021.

The tenant testified that he is seeking 12 months' rent compensation pursuant to section 51 of the *Act* because the landlord did not move into the subject rental property after he was evicted.

Counsel for the landlords submitted that the tenant voluntarily moved out of the subject rental property and that a Two Month Notice to End Tenancy for Landlord's Use of Property was not served on the tenant. Counsel for the landlords submitted that the tenant has failed to quantify his damages as no documentary evidence regarding lost wages was served on the landlords and the tenant has not proved any damages were suffered in finding new accomodation.

### Analysis

Section 49(5) of the *Act* states:

- (5)A landlord may end a tenancy in respect of a rental unit if
  - (a)the landlord enters into an agreement in good faith to sell the rental unit,
  - (b)all the conditions on which the sale depends have been satisfied, and
  - (c)the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
    - (i)the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
    - (ii)the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

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.

(1.1)A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2)If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

(3)The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a)accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b)using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Section 52 of the *Act* states:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
  - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
  - (e) when given by a landlord, be in the approved form.

The triggering event for the possibility of compensation under section 51 of the *Act*, is the service on the tenant of a written Notice to End Tenancy pursuant to section 49 of the *Act*. That Notice to End Tenancy must conform to the form and content requirements of section 52 of the *Act*. A messenger Notice to End Tenancy is not an enforceable way of ending a tenancy under the *Act* and does not comply with the form and content requirements of section 52 of the *Act*. The tenant was therefore under no obligation to vacate the subject rental property pursuant to the September 17, 2021 messenger message. Because a section 49 Notice to End Tenancy compliant with section 52 of the *Act* was not served on the tenant, the tenant is not entitled to section 51 compensation. The tenant's application is therefore dismissed without leave to reapply.

As the tenant was not successful in this application for dispute resolution, I find that the tenant is not entitled to recover the filing fee for this application, pursuant to section 72 of the *Act*.

### Conclusion

The tenant's application for dispute resolution is dismissed 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 15, 2021

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Residential Tenancy Branch