



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFT, CNL, MNDCT**

### Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

- Authorization to recover the filing fee from the other party pursuant to section 72;
- An order to cancel a 2 Month Notice to End Tenancy for Landlord’s Use pursuant to sections 49 and 55; and
- A monetary order for damages or compensation pursuant section 67.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord acknowledged being served with the tenant’s Notice of Dispute Resolution Hearing and stated she had no issues with timely service of documents.

### Issue(s) to be Decided

Should the notice to end tenancy be cancelled?

Is the tenant entitled to a monetary order for damages or compensation?

Can the tenant recover the filing fee?

### Background and Evidence

The landlord gave the following undisputed testimony. When the tenancy began, she gave the tenant the first 3 months free.

She served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use because her own house burned down. As required, she did not collect rent for the tenant's last month of November 2021 and the tenant vacated the rental unit on December 1, 2021. Although there was extensive damage done to the unit, the landlord returned the tenant's security deposit.

### Analysis

Based on the undisputed evidence of the landlord, I find, pursuant to section 44(1)(f), the tenancy ended on December 1, 2021 when the tenant vacated the rental unit. As such, I find that the tenant accepted the validity of the notice to end tenancy or otherwise agreed to terminate the tenancy and, the tenant's application seeking to cancel the Notice to End Tenancy is dismissed without leave to reapply on this basis. As such, it is not necessary for me to determine on the merits whether the Notice to End tenancy was valid and I make no findings with respect to its validity. As the tenant has already moved out of the rental unit, it is not necessary for an order of possession to be granted.

The tenant did not attend the hearing of his application seeking a monetary order.

The Residential Tenancy Branch Rules of Procedure state:

#### **7.1 Commencement of the dispute resolution hearing**

*The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.*

#### **7.3 Consequences of not attending the hearing**

*If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

#### **7.4 Evidence must be presented**

*Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.*

Accordingly, in the absence of the presentation of any evidence or submissions by the tenant, I order that the tenant's application seeking a monetary order and to recover the filing fee be dismissed without leave to reapply.

Conclusion

The tenant's application 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: January 25, 2022

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Residential Tenancy Branch