



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC, FFT

### Introduction

This hearing dealt with a tenant's application for monetary compensation payable where a landlord does not use the rental unit for the reason stated on a *Two Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice").

The tenant and the landlord's representative (the landlord's daughter) appeared for the hearing. The parties were affirmed. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

### Procedural Matters

At the outset of the hearing, I explored service of hearing materials. The tenant testified that he gave the proceeding package to the landlord's wife. The landlord's representative confirmed the landlord received the tenant's proceeding package from the landlord's wife on July 22, 2021 but that it was not accompanied by any evidence including the 2 Month Notice. Although the method of service was not in accordance with section 89(1) of the Act, considering the landlord was in receipt of the proceeding package, I deemed the landlord duly served with the tenant's proceeding package pursuant to the authority afforded me under section 71 of the Act.

The landlord's daughter acknowledged the tenancy ended due to a 2 Month Notice and she was familiar with the content of the 2 Month Notice. As such, I read the content of the 2 Month Notice that the tenant had submitted to the Residential Tenancy Branch in filing his Application for Dispute Resolution and the landlord's agent confirmed it accurately reflects the 2 Month Notice that had been served upon the tenant in ending the tenancy. Accordingly, I admitted the 2 Month Notice into evidence.

I confirmed the landlord served the tenant with evidence by mail sent on December 21, 2021 and the tenant received this evidence shortly thereafter. Accordingly, I admitted the landlord's evidence.

I heard the tenant had served additional evidence on January 11, 2022 by leaving it at the landlord's door. The landlord's representative acknowledged the landlord received this evidence package but she was of the position the landlord had not had sufficient opportunity to respond to it and the landlord's agent questioned the meaning and relevancy of the documents.

I turned to the tenant and he explained the additional evidence was an attempt to demonstrate the tenants suffered financial hardship after the subject tenancy ended. I explained to the parties that in these types of claims, a tenant does not have a burden to demonstrate financial hardship and such evidence would be irrelevant. After explaining this to the parties, the tenant was agreeable to exclusion of the late evidence. Accordingly, I did not admit this late filed evidence.

Having addressed the service issues, I explained the hearing process to the parties and gave the parties the opportunity to ask questions about the process.

I proceeded to hear from both parties and after the parties had the opportunity to be heard the tenant indicated he was willing to reach a settlement agreement with the landlord in resolution of this matter. The landlord's agent stated she would have to discuss that with her father, the landlord, before reaching such an agreement, if any.

The parties were agreeable to furthering a settlement discussion in the days following the teleconference call. A deadline of end of day, January 17, 2022, was set for reaching and submitting a written settlement agreement to me, if an agreement was reached. I informed the parties that I would hold my decision making in abeyance pending the receipt of an executed settlement agreement but that if I did not receive an executed settlement agreement by the deadline, I would proceed to make a decision on January 18, 2022, or later, on the presumption a settlement was not reached. The parties indicated they understood.

On January 18, 2022 correspondence was received from the landlord's representative stating the parties had reached a settlement but that she believed the tenant was having difficulty scanning and returning a signed copy of the settlement agreement. Shortly afterwards, a settlement agreement that has a signature of what appears to be the tenant and the landlord's agent was uploaded by the landlord's agent.

Although the parties missed the deadline I had set for providing an executed settlement agreement by a number of hours, the settlement document reached me before I had begun to render a decision. Therefore, I have accepted the settlement agreement and the remainder of this decision reflects the terms of settlement presented to me on January 18, 2022.

Issue(s) to be Decided

What are the terms of settlement?

Background and Evidence

The tenant and the landlord's agent executed a document reflecting a settlement agreement was reached in settlement of this dispute, that provides as follows [I have redacted identifying information and signatures for privacy purposes]:

January 18, 2022

Rental Tenancy Branch

File Number: [REDACTED]

Attn: Arbitrator [REDACTED]

We have negotiated a settlement subsequent to our hearing for dispute file number [REDACTED]. The landlord will provide payment of one month rent total \$1083.00 to the tenant. Payment is pending.

The [REDACTED]

[REDACTED] Representative for landlord [REDACTED]

[REDACTED], tenant

It should be noted, that I am unable to verify the tenant's signature as I do not have any documents before me, other than the settlement agreement, that had been previously

executed by the tenant; however, I recognize that during the hearing it was the tenant that had sought to pursue settlement. Therefore, I accept that the above agreement was reached by the tenant.

Similarly, I am unable to verify the signature of the landlord's agent; however, considering the document was uploaded using the dispute access code assigned to the landlord, I accept that the settlement agreement was entered into by the landlord's agent after the landlord's agent had opportunity to discuss settlement with her father, the landlord. Therefore, I accept that the above agreement was reached with the landlord's representative and that it is binding upon the landlord.

### Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record the agreement in the form of a decision or order.

I have accepted that the parties reached a settlement agreement before this dispute resolution proceeding had concluded and I honour their agreement by recording it and making its term an Order of mine to be binding upon both parties, as follows:

1. I order the landlord to pay to the tenant the sum of \$1083.00.

In recognition of the settlement agreement before me and that the payment has not yet been made, I provide the tenant with a Monetary Order for \$1083.00 to ensure payment is made.

### Conclusion

The parties resolved this dispute by way of settlement agreement. In recognition of the settlement agreement, I provide the tenant with a Monetary Order in the amount of \$1083.00 to ensure the agreed upon settlement is fulfilled.

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 19, 2022

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Residential Tenancy Branch