



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants seeking the equivalent of 12 time the monthly rent related to a Notice to End Tenancy for Landlord's Use of Property.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. Both parties confirmed they were not recording the hearing.

### Issue(s) to be Decided

Are the tenants entitled to compensation related to a Notice to End Tenancy for Landlord's Use of Property?

### Background and Evidence

The tenant testified that they did not receive a Two Month Notice to End Tenancy for Landlord's Use of Property. The tenant stated that they received a text message. Filed in evidence is a text message which in part reads,

Tenant,

"..I've been looking for a new place since... came".

[Reproduced as written]

Property manager,

"I agree and honestly I was out of the loop as well – well I know it's a push but of course I'd like to have it by the end of February and give February free rent"

[Reproduced as written]

Tenant,

“Sounds like a plan,...”

[Reproduced as written]

The legal counsel for the landlord stated that the tenancy was ended by mutual agreement that was signed by the male tenant.

The tenant stated that they know that the male tenant did sign some document; however, they have no idea what it was.

### Analysis

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

#### **Tenant's compensation: section 49 notice**

**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.

..

(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 the landlord or purchaser, as applicable, does not establish that

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

## Form and content of notice to end tenancy

- 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.**

## This Act cannot be avoided

- 5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

In this case, the tenants did not receive a notice to end tenancy under section 49 of the Act. I find the text message does not comply with section 49 or 52 of the Act and there was no requirement for the tenants to vacate the rental unit. This simply could have been a discussion to end the tenancy as the tenant had indicated they were already looking for a new place. The text messages do not say you must vacate.

Further, while I do not have a copy before me, the submission of the landlord legal counsel was that the male tenant signed a mutual agreement to end the tenancy, which was confirmed by the tenant that the male tenant did sign a document; however, they do not know what that document was. I find it more likely than not that the tenancy ended pursuant to section 44(1(c) of the Act, where the landlord and tenant agreed in writing to end the tenancy by a mutual agreement to end the tenancy.

The tenants' application is dismissed without leave to reapply. As the tenants were not successful, I find the tenants are not entitled to recover the cost of the filing fee.

## 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: February 04, 2022

---

Residential Tenancy Branch