



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNETC FFT

### Introduction

The tenant sought compensation pursuant to section 51(2) of the *Residential Tenancy Act* ("Act"). In addition, they sought recovery the cost of the application filing fee, pursuant to section 72 of the Act.

A dispute resolution hearing was scheduled for Thursday, March 31, 2022 at 1:30 PM. The hearing started on time and only the landlord and her daughter were in attendance.

### Preliminary Issue 1: Non-Attendance of Applicant

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. As the applicant failed to attend, they have not proven their claim. The application must therefore be dismissed.

### Preliminary Issue 2: Premature Filing of Application

Even if the applicant had attended the hearing, it is my finding that the matter would not have proceeded in any event.

The applicant sought compensation under subsection 51(2) of the Act. This section of the Act reads as follows:

Subject to subsection (3), the landlord or, if applicable, the purchase 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.

The applicant stated in their application that the tenancy ended on May 31, 2021. They then filed an application for dispute resolution on June 16, 2021. Based on the requirements under section 51(2) which require *at least* six months' duration to have elapsed from the end of the tenancy, the applicant did not have the right to file such an application until November 30, 2021, at the earliest. They did not. As such, the application is without merit and must be dismissed.

### Conclusion

**The application is hereby dismissed, without leave to reapply.**

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal the decision is limited to review grounds provided under section 79 of the Act, or, by way of a judicial review pursuant to the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: March 31, 2022

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Residential Tenancy Branch