



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC, FFT

### Introduction

The Tenant applies for the following relief under the *Residential Tenancy Act* (the “Act”):

- Compensation pursuant to ss. 51 and 67 after receiving a Two-Month Notice to End Tenancy signed August 19, 2021 (the “Two-Month Notice”); and
- Return of her filing fee pursuant to s. 72.

D.N. appeared as the Tenant. C.S. appeared as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Tenant advised that she served the Landlord with the Notice of Dispute Resolution and her evidence by way of registered mail sent on September 19, 2021. The Landlord acknowledged receipt of the same. I find that the Tenant’s application materials were served in accordance with s. 89 of the *Act*.

The Landlord advised that he served the Tenant with his responding evidence by way of registered mail. The Tenant acknowledges receipt of the Landlord’s evidence and raised no objections with respect to service. I find that the Landlord’s evidence was served in accordance with s. 89 of the *Act*.

### Issue(s) to be Decided

- 1) Is the Tenant entitled to compensation under s. 51?
- 2) Is the Tenant entitled to the return of her filing fee?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant took possession of the rental unit on May 1, 2017.
- The Tenant gave vacant possession of the rental unit to the Landlord on August 29, 2021.
- Immediately prior to the end of the tenancy, rent of \$800.00 was due on the first day of each month.
- An security deposit of \$375.00 was held in trust by the Landlord but has been returned to the Tenant since the end of the tenancy.

A copy of the written tenancy agreement was put into evidence. The tenancy agreement indicates that the tenancy was on a month-to-month basis, a point that was confirmed by both parties at the hearing.

It appears the property had been listed for sale sometime in the summer of the 2021. The Tenant indicates that she took notice that the For Sale sign on the front lawn was marked "sold" on August 18, 2021.

The Tenant says that she texted the Landlord on August 18, 2021 and that's when she received notice that the buyer wanted vacant possession of the rental unit. The Landlord provided a copy of the text message of August 18, 2021, which states the following:

Tenant: Hello are you going to be home today?

Landlord: Yes.  
After 5  
I been wanting to let you know that you will need to move out by October 31st as per the new owners request. I have the notice to hand to you on Sept 1st.

I have reproduced the above passage as written within the text message exchange. The Tenant replied on August 19, 2021 asking whether the Landlord was home and saying that she'd "like to pickup the notice from you this afternoon if that works".

The parties confirmed that the Landlord provided the Tenant with the Two-Month Notice on August 19, 2021. At the hearing, the Landlord indicated that though the notice was given on the 19<sup>th</sup>, it was effective on September 1, 2021. The Tenant acknowledges that it was her understanding that the Two-Month Notice was effective on September 1, 2021, though that was due to the Two-Month Notice coming into effect two-months before the end of the tenancy. The Landlord provided a video from August 19, 2021 in which this is briefly discussed between the parties.

After receiving the Two-Month Notice, the Tenant says that she handed the Landlord her own notice that she would be vacating the rental unit on August 29, 2021. A copy of the Tenant's notice to end tenancy delivered to the Landlord on August 19, 2021 was put into evidence by the Tenant.

At the hearing, the Landlord said he felt the exchange of notices on August 19, 2021 was planned by the Tenant. He said that it was his plan to give the Tenant the Two-Month Notice on August 31, 2021 but did so earlier at the Tenant's request. The Landlord expressed his expectation that one month's notice would be given if the Tenant chose to end the tenancy.

The Tenant emphasized that she was following guidance she received from the Residential Tenancy Branch.

### Analysis

The Tenant seeks compensation under s. 51 of the *Act* after the Landlord issued the Two-Month Notice.

Under s. 51 of the *Act*, a tenant who receives a notice to end tenancy issued by a landlord under s. 49 is entitled to compensation equivalent to one month's rent payable under the tenancy agreement.

The present dispute largely revolves around the parties misunderstanding on when a notice to end tenancy is said to "come into effect". The parties both expressed that the

Two-Month Notice was effective on September 1, 2021 since that was two months before the date the tenancy was to end under the notice.

The *Act* makes use of the term “effective date”, which is the date upon which the tenancy is said to end taking into account the various notice requirements under ss. 46, 47, and 49. In these particular circumstances, the Two-Month Notice’s effective date is set by s. 49(2), which sets out that the notice to end tenancy cannot list an effective date for the end of the tenancy that is earlier than 2 months after the tenant receives the notice.

However, the *Act* makes no reference to incidents in which a notice to end tenancy issued under s. 49 (or 46 and 47) is dormant and coming into effect at some later date. The use of the terms two-month notice, one-month notice, or 10-day notice is in reference to the minimum amount of notice required to a tenant when a notice to end tenancy is issued under ss. 49, 47, or 46. So long as it meets the minimum amount of time required, the effective date, which is the date the tenancy is set to end, can be any other date in the future. All of these sections of the *Act* refer to when a notice to end tenancy is received by a tenant as the triggering point in which the notice period is calculated. In other words, a landlord could choose to give a tenant three months notice when they issue a two-month notice to end tenancy under s. 49.

I provide this context because there is no dispute between the parties with respect to when the Tenant received the Two-Month Notice, which was on August 19, 2021. I accept that the Tenant asked for the notice, as evidenced by her text message on that date. However, that is not relevant because the triggering event is when the notice was received. Further, the Landlord was under no obligation to give the Tenant the Two-Month Notice at that time. The only constraint on the amount to be given notice is set by s. 49(2), which requires at least two months notice and the effective date of the notice being the day before rent was due under the tenancy agreement. By delivering the Two-Month Notice on August 19, 2021, the Landlord gave the Tenant more notice than was required as minimum under s. 49. However, that does not mean the Two-Month Notice was somehow dormant until September 1, 2021.

Accordingly, I find that the Tenant received the Two-Month Notice on August 19, 2021. As the Tenant received a Two-Month Notice issued under s. 49, she became entitled to compensation under s. 51, which is compensation equivalent to one month’s rent payable under the tenancy agreement.

Pursuant to s. 50 of the *Act*, a tenant who receives a notice issued under s. 49, as occurred here, is entitled to end the tenancy by giving the landlord at least 10-days notice provided it is a periodic tenancy. Based on the undisputed testimony of the parties that this was a month-to-month tenancy and in consideration of the definition of a periodic tenancy under s. 1 of the *Act*, I find that this was a periodic tenancy.

It is undisputed that the Tenant received the Two-Month Notice on August 19, 2021 and immediately afterwards gave the Landlord her notice that she would be leaving on August 19, 2021. Though I accept this was likely planned by the Tenant, that point is not relevant. Her right to end the tenancy under s. 50 was triggered immediately upon receipt of the Two-Month Notice, which occurred before she issued her notice. Again, the Landlord was under no obligation to issue the Two-Month Notice when the Tenant asked for it, he only needed to comply with the minimum notice requirements set by s. 49(2), which he did in this case. It was his choice. I find that the Tenant's notice to vacate the rental unit dated August 19, 2021 complies with the requirements set under ss. 50 and 52 of the *Act*. It was a valid notice.

Section 50(3) of the *Act* specifies that where a tenant elects to end a tenancy under s. 50, it does not affect the tenant's right to compensation under s. 51. Section 51(1.2) indicates when a tenant ends a tenancy by giving notice under s. 50, as occurred here, and rent was paid before the notice was given to the landlord, then the a landlord must refund the tenant the rent. This is what occurred here as there was no dispute that the Tenant paid her rent for August 2021 before she gave the Landlord her notice that she would be vacating the rental unit on August 29, 2021.

Given the above, I find that pursuant to s. 51(1.2) of the *Act* the Tenant was entitled to the return of the rent she paid for August 2021, which was \$800.00. As the Landlord has not done so, I grant the Tenant's claim and order that the Landlord pay her the compensation for which she is entitled to under s. 51.

### Conclusion

The Tenant has satisfied me that she was entitled to compensation under s. 51 of the *Act* and is entitled to compensation equivalent to one month's rent, which in this case is \$800.00.

As the Tenant was successful in her application, I find that she is entitled to the return of her filing fee. I order pursuant to s. 72(1) that the Landlord pay the Tenant's \$100.00 filing fee.

Pursuant to s. 67 of the *Act*, I order that the Landlord pay the Tenant **\$900.00**, which represents the total amount owed to the Tenant pursuant to her claims under ss. 51 and 72.

It is the Tenant's obligation to serve the monetary order on the Landlord. If the Landlord does not comply with the monetary order, it may be filed by the Tenant with the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: March 18, 2022

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Residential Tenancy Branch