



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on April 25, 2022. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 50 and 51; and,
- recovery of the filing fee.

The Tenant attended the hearing. The Landlord did not attend the hearing. The Tenant testified that she sent a copy of the Notice of Hearing along with supporting documentary evidence to the Landlord by registered mail on October 22, 2021. Proof of mailing was provided. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received 5 days later. I find the Landlord is deemed to have received this package on October 27, 2021.

The Tenant was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Is the Tenant entitled to compensation, pursuant to section 50 and 51 of the *Act*, relating to a 2 Month Notice to End Tenancy for Landlord's Use?

### Background and Evidence

The Tenant stated that monthly rent was \$1,000.00 and was due on the first of the month. The Tenant stated that she received a 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) sometime in early September 2021, and the effective date of the Notice was October 31, 2021. The Tenant stated that she lost the Notice, so she does not have a copy of it. The Tenant stated that she paid a security deposit and pet deposit totalling \$1,000.00.

The Tenant stated that she pays rent in \$500.00 increments, every half month. The Tenant paid rent in full for September, and by the time she received the Notice, she had already paid \$500.00 for the first half of October 2021. The Tenant stated that on September 16, 2021, she sent the Landlord a 10 Day Notice that she would be vacating by September 30, 2021. The Tenant stated that the Landlord gave her \$2,000.00 back on October 18, 2021, which was her deposits, plus one free month's rent. The Tenant is seeking the extra half month rent she paid, as she did not live in the unit for October.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

First, I turn to the Tenant's request to obtain compensation, pursuant to section 50 and 51, based on the Notice. I note the following relevant portions of the Act:

#### **Tenant may end tenancy early following notice under certain sections**

**50** (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*] or the tenant receives a director's order ending a periodic tenancy under section 49.2 [*director's orders: renovations or repairs*], the tenant may end the tenancy early by

- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice or director's order, and
- (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

**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.

In this case, I note the Tenant does not have a copy of the Notice. Section 50 and 51 of the Act is only triggered if a valid Notice is issued. Given the Tenant lost the Notice, and did not have a copy of it, I am not satisfied that a valid Notice was issued, and that she is entitled to the compensation sought. I dismiss the Tenant's application, in full, without leave.

Conclusion

The Tenant's application is dismissed, without leave.

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: April 25, 2022

---

Residential Tenancy Branch