



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC

### Introduction

This hearing dealt with the tenants' application pursuant to section 67 of the *Residential Tenancy Act* (the "Act") for a monetary award for damages and loss.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. In accordance with the Act, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The landlord testified that they received the tenant's materials and had not served any materials of their own. Based on the testimonies I find the landlord duly served in accordance with sections 88 and 89 of the Act.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

## Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began on May 1, 2021. Monthly rent was \$1,000.00 payable on the first of each month. A security deposit of \$500.00 was paid at the start of the tenancy and has been dealt with in accordance with the *Act*.

The landlord verbally informed the tenant of their intention to end the tenancy sometime in October 1, 2021 and subsequently sent a text message on November 29, 2021 informing them that the tenancy would end on December 1, 2021. The parties agree that no written Notice to End Tenancy was ever issued.

The tenants vacated the rental unit by December 1, 2021 and submit that they believe the rental unit is not being used for the purpose the landlord stated in their text message of a family member occupying the suite. The tenants now seek a monetary award pursuant to section 51 of the *Act* in an amount equivalent to 12 times the monthly rent.

## Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51 provides that 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 compensation equivalent to 12 times the monthly rent under certain circumstances.

Section 49 provides that a landlord may end a periodic tenancy if the landlord intends in good faith to occupy the rental unit. Subsection 49(7) provides that: A notice under this section must comply with section 52 [*form and content of notice to end tenancy*]

Section 52 provides that:

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.

The parties agree that the landlord issued a text message on November 29, 2021, after earlier verbal discussions, stating that the tenancy would end on December 1, 2021. The parties gave undisputed evidence that no Notice to End Tenancy was ever issued.

I find the text message of November 29, 2021 does not meet the requirements of the *Act*. It is not in the approved form, does not identify the rental unit address and fails to provide an effective date that conforms to the requirements of section 49(2)(a). I find this correspondence would have had no power or effect as a notice to end tenancy. The tenants were under no obligation to vacate the rental unit.

I find that the issuance of this correspondence does not trigger the obligation of the landlord to provide a monetary award to the tenants pursuant to section 51 as there was no valid notice to end tenancy issued pursuant to section 49.

I therefore find no basis for a monetary award and dismiss the tenant's application.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

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: June 30, 2022

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Residential Tenancy Branch