



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- a monetary order in the amount of the monthly rent payable under the tenancy agreement, pursuant to section 51(1); and
- an authorization to recover the filing fee for this application, under section 72.

Tenants MW and IS (the tenant) and landlords TM (the landlord) and RM attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

### Issues to be Decided

Are the tenants entitled to:

1. a monetary order under section 51(1) of the Act?
2. an authorization to recover the filing fee?

## Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenants' obligation to present the evidence to substantiate the application.

The tenant affirmed the tenancy started on December 01, 2015. The landlords purchased the rental unit in June 2021 and do not know when the tenancy started.

Both parties agreed the tenancy ended on October 31, 2021. Monthly rent when the tenancy ended was \$1,259.00, due on the first day of the month.

The tenants signed a new tenancy agreement on October 06, 2020 with the previous owners. The tenants and the previous owners agreed to increase the rent because the tenants gained exclusive use of the rental unit's backyard. The October 06, 2020 fixed-term agreement was from November 01, 2020 to October 31, 2021.

The tenants' application states:

The landlords informed us verbally when they bought the home in summer 2021 that they intended to either flip the home or move into it themselves. They served us with a form RTB-32. Now they refuse to pay the required compensation, claiming we misled them about the rules. They are claiming that we gave them late notice to move out and that we owe them rent for November 2021.

Both parties agreed the landlords served and the tenants received a 2 month Notice to end tenancy for landlord's use (the Notice) on September 30, 2021. The Notice's effective date was December 31, 2021.

The tenant served a tenants' notice to end tenancy (the tenants' notice) via email on October 01, 2021. The tenants' notice states:

Yesterday IS and I received the two month notice to end tenancy for landlord's use of property at [rental unit's address]. We have read the form and we understand that we must move out by December 31, 2021.

Paragraph 3 on page 3 of the notice provides that the landlord must compensate us and amount equal to one month's rent.

Paragraph 4 on page 3 of the notice provides that we may be able to move out early.

We can move out earlier if we provide at least 10 days notice.

By this email we are providing notice that we will move out of the rental unit by October 31, 2021. Since we have already paid rent for October, our last month, this amount must be refunded to us. We will arrange with you a time to do an inspection on the 31st. In the meantime, please refund the rent for October and contact us to acknowledge your mutual understanding. Thank you.

The landlord confirmed receipt of the tenants' notice on October 01, 2021.

The tenant stated he paid rent on October 01, 2021 in the amount of \$1,259.00. The landlord testified the tenants paid rent due on October 01, 2021 in late September 2021.

### Analysis

Sections 49(2) and (3) of the Act states the landlord may end a tenancy by serving a two month notice to end tenancy:

(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 2 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

I accept the uncontested testimony that the landlords served, and the tenants received the Notice on September 30, 2021 and that the Notice's effective date was December 31, 2021.

Based on the October 06, 2021 tenancy agreement and the tenant's convincing testimony, I find the tenants agreed to a new tenancy agreement on October 06, 2021 with the rental unit's previous owners. I find the tenancy was for a fixed-term from November 01, 2020 to October 31, 2021 and would continue as a periodic tenancy, per section 44(3) of the Act:

If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to

have renewed the tenancy agreement as a month to month tenancy on the same terms.

Section 50 of the Act states:

**(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].

(emphasis added)

Section 51(1) of the Act 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 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.

Residential Tenancy Branch Policy Guideline 50 states:

Section 51(1) of the RTA requires a landlord who gives a notice to end a tenancy for landlord's use under section 49 to pay compensation to the tenant for ending the tenancy. Under the RTA, a tenant who receives a valid notice to end tenancy for landlord's use 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.

[...]

A tenant who is entitled to receive one month's rent under these sections may instead withhold that amount from the last month's rent. If the tenant ends the tenancy earlier in these circumstances, as permitted by section 50 of the RTA, and before withholding the last month's rent, the landlord must refund that amount.

Based on the landlord's more convincing testimony and the tenants' notice, I find the tenants paid rent due on October 01, 2021 in the amount of \$1,259.00 in late September 2021.

The tenants' notice under section 50(1) of the Act was effective on the date the fixed-term tenancy ended and would continue as a periodic tenancy.

Per sections 51(1) and 50(2) of the Act, the tenants are entitled to one month's rent. As the tenants paid rent in full in late September 2021 for the period of October 01 to 31, served the tenants' notice on October 01 and moved out on October 31, 2021, the tenants are entitled to receive from the landlords an amount that is equivalent to one month's rent.

Thus, I award the tenants the amount of \$1,259.00.

As the tenants' application is successful, I award the tenants the return of the \$100.00 filing fee.

In summary, the tenants are entitled to \$1,359.00.

### Conclusion

Pursuant to sections 51(1) and 72 of the Act, I grant the tenant a monetary order in the amount of \$1,359.00.

The tenants are provided with this order in the above terms and the landlords must be served with this order. Should the landlords fail to comply with this order, this order may be filed in 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: August 12, 2022

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Residential Tenancy Branch