



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for compensation for a monetary loss or other money owed and recovery of the cost of the filing fee.

The tenant, the landlords and the landlord's legal counsel attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited. The parties were affirmed.

The parties confirmed receiving the other's evidence.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Issue(s) to be Decided

Is the tenant entitled to monetary compensation due to a section 49 breach and to recovery of the filing fee?

### Background and Evidence

The tenancy start date was January 10, 2020, and ended on January 9, 2022. Monthly rent was \$2,300. Filed in evidence was a copy of the written tenancy agreement.

The tenant's monetary claim is \$27,600. The tenant's evidence states that this was due to a section 49 breach. While the tenant did not provide a detailed calculation of her monetary claim, the alleged section 49 breach shows this was for compensation equal to 12 monthly rent payments.

In her application, the tenant wrote the following:

*LL told T his sister was moving into the rental unit so T advised she would move out at the end of lease. LL's sister did not move in, and T was not made aware of this change. T feels she was lied to in order to induce her departure from the house. After T moved out, L posted unit for \$1200 more than what T was paying. T feels she was illegally frauded from the house under false pretenses in order to benefit L's financial gain. LL asked for a rent increase but would not request legal allowance.*

The tenant stated she now understood that she was unlikely to be successful as she did not receive a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice).

The tenant's evidence included a series of text messages between the parties and a rental listing.

Landlord's response –

The landlord's written response stated that the tenant agreed to leave at the end of her lease because she could no longer afford the rent.

The landlord's response contained a counter claim for monetary compensation.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 51(1) of the Act, 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 addition to the amount payable under subsection (1), Section 51(2) of the Act provides that if steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or if the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount equivalent of 12 times the monthly rent payable under the tenancy agreement.

What this means is, the triggering event entitling a tenant to receive compensation equivalent to 12 times the monthly rent under the tenancy agreement is receiving the proper Notice.

In this case, the tenant did not receive a 2 Month Notice. A landlord cannot end a tenancy by text message. As a result, I find it was the tenant's choice to vacate the rental unit, as they were not legally obligated to vacate.

Based on the above, I find the tenant has failed to prove the landlord ended the tenancy in accordance with section 49 of the Act and therefore, I find the tenant has submitted insufficient evidence to show she is entitled to compensation under section 51(2) of the Act. Therefore, I dismiss the tenant's application without leave to reapply.

I informed the landlord and counsel I could not consider a counterclaim made through written response. The only way I could consider the landlord's claim was through their own application for dispute resolution.

### Conclusion

For the above reasons, I dismiss the tenant's application due to insufficient evidence, 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*. Pursuant to

section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: September 20, 2022

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Residential Tenancy Branch