



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC, FFT

### Introduction

On February 14, 2022, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation based on a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 51 of the *Residential Tenancy Act* (the "Act") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she served the Landlord her Notice of Hearing and evidence package by hand on February 17, 2022, and the Landlord confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served with the Tenant's Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

The Landlord advised that he served his evidence by hand to the Tenant on September 16, 2022, and the Tenant confirmed that she received this evidence. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?

#### Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 1, 2021, as a month-to-month tenancy. Rent was established at an amount of \$2,500.00 per month and was due on the first day of each month. A security deposit of \$1,250.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

All parties also agreed that the Landlord never served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property. The Tenant contends that she is entitled to one month's compensation because she was advised by the Landlord's realtor that he would like to move back into the rental unit, and as a result, she would be required to leave. However, she acknowledged that she did not understand her rights under the *Act*, that she did not look into those rights, and that she gave up vacant possession of the rental unit based on her understanding that the Landlord would owe her the one month's compensation.

## Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 44 of the *Act* below outlines all of the ways a tenancy may end, and the relevant subsection for this claim has been emphasized by being bolded:

- 44 (1) *A tenancy ends only if one or more of the following applies:*
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:*
    - (i) section 45 [tenant's notice];*
    - (i.1) section 45.1 [tenant's notice: family violence or long-term care];*
    - (ii) section 46 [landlord's notice: non-payment of rent];*
    - (iii) section 47 [landlord's notice: cause];*
    - (iv) section 48 [landlord's notice: end of employment];*
    - (v) section 49 [landlord's notice: landlord's use of property];***
    - (vi) section 49.1 [landlord's notice: tenant ceases to qualify];*
    - (vii) section 50 [tenant may end tenancy early];*
  - (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;*
  - (c) the landlord and tenant agree in writing to end the tenancy;*
  - (d) the tenant vacates or abandons the rental unit;*
  - (e) the tenancy agreement is frustrated;*
  - (f) the director orders that the tenancy is ended;*
  - (g) the tenancy agreement is a sublease agreement.*
- (2) [Repealed 2003-81-37.]*
- (3) 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 51 of the *Act* below stipulates the requirement for the Landlord to compensate the Tenant in the event that the Tenant is served with a Two Month Notice to End Tenancy for Landlord's Use of Property. Again, the relevant subsection pertinent to this claim has been emphasized by being bolded.

**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.*

Finally, Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and **be in the approved form.**

When reviewing the totality of the evidence before me, it is clear that the Landlord never served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property. Once this approved form is served, only then would the Tenant be entitled to the one month's compensation under the *Act*. As this form was never served by the Landlord, I find that the tenancy actually ended by way of the Tenant's notice to end her tenancy.

Had the Tenant done her due diligence and sought out information with respect to her rights as a Tenant, she would have discovered that she was not required to give up vacant possession of the rental unit in this circumstance until she was served with this specific Notice.

As the Tenant was not successful in this claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, I dismiss the Tenant's Application 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: September 29, 2022

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Residential Tenancy Branch