



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNETC, MNSD, FFT**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant UB attended for both tenants (“the tenant”). The landlord attended. The parties were given a full opportunity to be heard, to present sworn testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the Application for Dispute Resolution and evidentiary package. No issue was raised regarding service. I find the tenant served the landlord in compliance with the *Act*.

The landlord did not submit any evidence.

The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

The parties confirmed their email addresses to which a copy of this Decision shall be sent.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award? Can the tenant recover the filing fee?

### Background and Evidence

The parties agreed as follows. The parties entered into a tenancy agreement for a basement apartment in the landlord's residence beginning October 15, 2019 and ending on February 1, 2022. Monthly rent was \$850.00 and the security deposit of \$425.00 was returned to the tenant at the end of the tenancy.

### *Compensation -12 Months*

The parties agreed the landlord sent the tenant a text on January 24, 2022 saying the house was going to be demolished and asking the tenant to move out on March 1, 2022. The tenant did not dispute the request.

The parties agreed the landlord did not issue a Two Month Notice. The tenant acknowledged she was not served with any notice to end tenancy in the RTB form. The tenant asserted that they believed they had no choice but to move out. Finding a new place to live in such a short time was stressful and difficult..

### *Summary of Claims*

The tenant requested an award of 12 times the monthly rent and reimbursement of the filing fee.

The landlord requested the tenant's claims be dismissed without leave to reapply.

### Analysis

Rule of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the

person making the claim. In most circumstances this is the person making the application.”

The tenant has applied for a monetary award and must therefore demonstrate their entitlement to an award based on a breach of the Act, their tenancy agreement or the Regulations.

### *Tenant's Claim for Compensation - Section 51*

Section 44(1) of the Act states:

A tenancy ends only if one or more of the following applies.

(a) the landlord gives notice to end the tenancy in accordance with one of the following:

...

(v) section 49 [landlord's notice: landlord's use of property]

As noted in section 49(4), for a notice to be valid, “A notice under this section must comply with section 52.”

Section 52 provides very specific requirements for a notice to end tenancy. To be effective, a notice to end a tenancy must be in writing and must be signed and dated by the landlord or tenant giving the notice, give the address of the rental unit, state the effective date of the notice, except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and when given by a landlord, be in the approved form. (underlining added)

Section 51 of the Act clearly states that a tenant must receive a notice to end tenancy under section 49 to be entitled to any compensation. This position is supported by *Policy Guideline #50* which notes:

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).

I find that the tenant was not given a notice to end tenancy and therefore they were under no obligation to vacate the property. They are considered to have vacated under their own volition.

While the tenant believed they had to move out, I find that I have no power to issue any compensation.

For these reasons, I dismiss the tenant's application for compensation under this heading without leave to reapply.

As the tenant has not been successful, I do not award reimbursement of the filing fee.

### Conclusion

The tenant's application is dismissed 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: November 07, 2022

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Residential Tenancy Branch