



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy. The tenant's application pursuant to the Residential Tenancy Act (the Act) is for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2);
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, under section 67; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties 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 all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

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."

### Preliminary Issue – Service

The landlord confirmed receipt of the notice of hearing and the tenant's evidence (the materials) and that she had enough time to review the materials.

Based on the landlord's testimony, I find the tenant served the materials in accordance with section 89(1) of the Act.

The landlord affirmed she served the response evidence in person on November 29, 2022 at 4:45 P.M. at the tenant's forwarding address.

The tenant stated he received the response evidence around December 06, 2022 and that he did not have time to review it.

The tenant's testimony about the date he received the response evidence was vague. Based on the landlord's convincing testimony, I find the landlord served the response evidence in person on November 29, 2022, in accordance with section 89(1)(a) of the Act.

### Issues to be Decided

Is the tenant entitled to:

1. a monetary order in an amount equivalent to twelve times the monthly rent?
2. a monetary order for loss?
3. an authorization to recover the filing fee for this application?

### 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 tenant's claims and my findings are set out below.

Both parties agreed the tenancy started on April 01, 2020 and ended on July 31, 2021. Monthly rent including electricity when the tenancy ended was \$800.00 plus electricity, due on the first day of the month. The landlord collected and returned a security deposit. The tenancy agreement was submitted into evidence. It indicates the security deposit was \$400.00.

The landlord listed the rental unit for sale in October 2020. In April 2021 the landlord received an offer and served the April 21, 2021 two month notice to end tenancy (the April Notice). The purchaser cancelled the offer, and the landlord rescinded the April Notice.

Both parties agreed the landlord served a new notice to end tenancy for landlord's use on June 18, 2021 (the June Notice). The landlord served the June Notice for her son to

occupy the rental unit. The landlord submitted a copy of the June Notice into evidence. The effective date was August 31, 2021.

The tenant is claiming compensation in the amount of \$12,000.00 (12 months of rent payment) because the landlord's son did not occupy the rental unit for six months after the effective date.

The landlord testified that her son needed a place to live and she decided to serve the June Notice. The landlord also continued to list the rental unit for sale and received an offer on August 13, 2021.

The landlord said her son moved to the rental unit on August 01 and moved out on August 31, 2021, as the landlord accepted the offer for sale received on August 13, 2021.

The tenant is claiming compensation in the amount of \$197.00, as the tenant could not use the rental unit's mailbox and the tenant paid this amount to rent a mailbox for one year during the tenancy.

The landlord affirmed the rental property had two suites, the mailbox was used by the lower suite and the tenant was aware at the start of the tenancy that he would not be able to use the mailbox.

The tenant stated he was not aware that he would not be able to use the mailbox until after the tenancy began.

The tenant is claiming compensation in the amount of \$8,000.00, as the tenant suffered a lot of stress because the landlord served the notices to end the tenancy. The landlord testified that the tenant was able to secure a new rental unit two weeks after she served the June Notice.

The tenant is claiming compensation in the amount of \$11.34, as he paid this amount to serve the documents for this application.

### Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch (RTB) Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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 the case is on the person making the claim.

### Mailbox

Based on the testimony offered by both parties, I find the tenant proved, on a balance of probabilities, that he was not able to use the mailbox during the tenancy and that he paid \$197.00 to rent a mailbox.

In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The landlord did not provide documentary evidence to support her defence argument that the tenant agreed to not have access to the rental unit's mailbox.

Section 27(1) of the Act states:

A landlord must not terminate or restrict a service or facility if  
(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

RTB Policy Guideline 1 states:

The landlord must give each tenant at least one set of keys for the rental unit, main doors, mailbox and any other common areas under the landlord's control, such as recreational or laundry rooms. The tenant must return all keys at the end of the tenancy, including those he or she had cut at his or her own expense.

I find that accessing a mailbox is an essential service that must not be restricted by a landlord.

Considering the above, I find that the tenant proved, on a balance of probabilities, that the landlord breached section 27(1) of the Act by not allowing the tenant to access the mailbox and the tenant suffered a loss of \$197.00 due to the landlord's failure to comply with section 27(1) of the Act.

As such, the tenant is entitled to compensation in the amount of \$197.00.

#### Emotional compensation

Based on the tenant's vague testimony, I find the tenant failed to prove, on a balance of probabilities, that he suffered a financial loss because the landlord breached the Act.

As such, I dismiss the tenant's claim.

#### Litigation cost

The Act does not provide for the recovery of costs associated with pursuing a claim against a party to a tenancy, with the exception of the filing fee for the Application pursuant to Section 72(1) of the Act.

I dismiss the tenant's claim for the costs of registered mailings.

#### 12 month compensation

Section 49 of the Act states:

(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

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51(2) of the Act states:

(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.

[...]

(2) Subject to subsection (3), **the landlord** or, if applicable, the purchaser who asked the landlord to give the notice **must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that**

(a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and

(b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(emphasis added)

I accept the uncontested testimony that the landlord served, and the tenant received the June Notice on June 18, 2021.

Per section 51(2) of the Act, the landlord has the onus to prove that the stated purpose for ending the tenancy was accomplished.

Residential Tenancy Branch Policy Guideline 2A states:

6-month occupancy requirement

The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).

[...]

**E. CONSEQUENCES FOR NOT USING THE PROPERTY FOR THE STATED PURPOSE**

If a tenant can show that a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:

- taken steps to accomplish 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

the tenant may seek an order that the landlord pay the tenant additional compensation equal to 12 times the monthly rent payable under the tenancy agreement.

The landlord has the onus to prove that extenuating circumstances prevented her son from occupying the rental unit from September 01, 2021 to February 28, 2022, as the June Notice effective date was August 31, 2021.

The landlord admits that she intended to sell the rental unit since October 2020. The landlord did not claim that she faced extenuating circumstances which caused her to sell the rental unit after she served the June Notice.

Based on the undisputed testimony, I find the landlord served the June Notice and decided to proceed with the sale of the rental unit on August 31, 2021.

The landlord did not accomplish the stated purpose for ending the tenancy: to allow the landlord's son to occupy the rental unit for six months after August 31, 2021.

As such, per section 51(2) of the Act, the tenant is entitled to a monetary award in the amount of 12 times the monthly rent payable.

The Act defines rent as "money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities".

I accept the undisputed testimony that monthly rent was \$800.00 plus utilities. I find that payment of utilities is not part of rent. The landlord collected a security deposit in the amount of \$400.00 (half of the agreed rent amount) and both parties agreed that monthly rent was \$800.00.

Thus, I award the tenant a monetary award in the amount of \$9,600.00 (\$800.00 x 12 months).

#### Filing fee

As the tenant was partially successful in this application, I find the tenant is entitled to recover the \$100.00 filing fee.

In summary, the tenant is entitled to:

Mailbox	197.00
12 month compensation	9,600.00
Filing fee	100.00
<b>Total monetary award</b>	<b>9,897.00</b>

#### Conclusion

Pursuant to sections 51(2), 67 and 72 of the Act, I grant the tenant a monetary order in the amount of \$9,897.00.

The tenant is provided with this order in the above terms and the landlord must be served with this order in accordance with the Act. Should the landlord 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: December 14, 2022

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Residential Tenancy Branch