



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Tenant: MNETC FF

Landlord: MNDC FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on January 5, 2023. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

Both parties attended the hearing and provided affirmed testimony. Both parties confirmed receipt of each other’s Notice of Dispute Resolution Proceeding and evidence packages and no service issues were raised.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

#### Tenant

- Is the Tenant entitled to compensation pursuant to section 51 of the Act, as a result of receiving Notice to End Tenancy under section 49?

#### Landlord:

- Is the Landlord entitled to monetary compensation for damage or loss under the Act?

### Background and Evidence

A copy of the tenancy agreement was provided into evidence which shows that monthly rent was set at \$1,800.00 and the tenancy was month-to-month. The Tenants moved in on or around February 15, 2021, and moved out on or around January 15, 2022.

The Tenant stated that he is seeking 12 month's rent and moving fees because he was asked to move out by the Landlord in late 2021 when the Landlord came to the property to discuss ending the tenancy. The Tenant stated that he had a friendly conversation with the Landlord at that time, and after talking with the Landlord, he decided to start looking for alternative places to live. Eventually, the Tenant found an alternative place to live, and he moved out on or around January 15, 2022. The Tenant stated he never got any formal or proper Notice to End Tenancy from the Landlord, but he decided to move to accommodate the Landlord, not because he wanted to.

Counsel for the Landlord stated that since no valid Notice to End Tenancy was issued pursuant to section 49 of the Act, the Tenant is not entitled to compensation under section 51 of the Act. Counsel for the Landlord stated that they did not actually give formal notice or specifically ask for the Tenant to move out as quickly as he did. He pointed to a text message provided into evidence:

Landlord: Hello. Because of the trouble between the next door neighbour and the tenant in the basement, the neighbour has called in a complaint with the city. They will be sending in a building inspector to look into legalizing the house. Upon review with a construction company because the house is so old to update it to current building code will be difficult. We will have tear down the house and build a new one. Therefore, you may live in your rental unit until that time.

Counsel for the Landlord stated that it was the Tenant's mistake to move out without proper notice, and it is not reasonable to interpret the above noted text message as a notice that complies with form and content requirements under section 52 of the Act.

The Landlord stated he cross applied for \$5,000.00 to cover the cost of legal expenses to defend against the Tenant's improper and baseless application and because he failed to mitigate the damage by seeking his own legal advice and withdrawing his application. The Landlord's counsel feels that if the Tenant has obtained legal advice, it would have been clear that the claim was without merit, which would have mitigated mounting legal costs.

## Analysis

The Tenants have applied for monetary compensation, pursuant to section 51(2) of the Act, because the Landlord issued a 2, 4, or 12 month Notice to End Tenancy and the Landlord has failed to comply with the Act to use the rental unit for the “stated purpose.”

I have reviewed the testimony and evidence on this matter, and I note that section 51 of the Act states the following:

### ***Tenant's compensation: section 49 notice***

**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.*

(1.1) *A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.*

(1.2) *If a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid.*

(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.*

(3) *The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as applicable, from*

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

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

I also note section 49(7) of the Act, which states the following:

*49(7) A notice under this section must comply with section 52 [form and content of notice to end tenancy] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.*

I note that in order for compensation to be due and payable under section 51 of the Act, a valid Notice to End Tenancy must be issued under section 49. This Notice must comply with section 52 of the Act, which specifies the following:

***Form and content of notice to end tenancy***

***52 In order to be effective, a notice to end a tenancy must be in writing and must***

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
- (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
- (e) when given by a landlord, be in the approved form.*

In this case, there is no evidence that a valid Notice was issued, under section 49 of the Act. Rather, there was an informal text message, and a conversation, which I find does not equate to a valid Notice under section 49 and 52 of the Act. Since no Notice was issued, I find the Tenants are not entitled to 12 month's compensation, or related costs, pursuant to section 51(2) of the Act. The Tenants were not required to move until a valid Notice was issued. However, they chose to move anyways.

I dismiss the Tenants' application, in full, without leave to reapply.

With respect to the Landlord's cross application for \$5,000.00 to cover legal costs incurred to defend against the Tenant's "baseless" claim, I find these costs are not recoverable under the Act. Each party is expected to bear the costs to prepare, and serve relevant documentation, submissions, and evidence. I note this is an

administrative tribunal, intended to streamline processes, and legal representation is not mandatory. This administrative tribunal is distinct from a Court where “costs” may be awarded at the Judge’s discretion.

I dismiss both applications, in full, without leave to reapply.

Conclusion

Both applications are dismissed, in full, without leave.

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: January 6, 2023

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Residential Tenancy Branch