



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNETC, FFT

### Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied for compensation related to being served with a Two Month Notice to End Tenancy for Landlord's Use and to recover the fee for filing this Application for Dispute Resolution. As the Tenant was never served with a Two Month Notice to End Tenancy for Landlord's Use, I will not be considering whether he is entitled to compensation related to being served with a Two Month Notice to End Tenancy.

It appears, from information on the Application for Dispute Resolution, that the Tenant is applying for two months compensation for being "illegally evicted"; compensation for emergency lodging; and compensation for being without a kitchen. As the Landlord was made aware of the issues in dispute at these proceedings, I will be considering these claims.

The Tenant stated that on the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in April of 2022 was sent to the Landlord, via registered mail, although he cannot recall the date of service. The Landlord acknowledged receiving these documents in April of 2022, with the exception of the letter dated March 31, 2022, sometime in April of 2022. The documents the Landlord acknowledged receiving were accepted as evidence for these proceedings.

I find that the Tenant has failed to establish that the letter dated March 31, 2022 was served to the Landlord in April of 2022. As such, this letter was not accepted as evidence for these proceedings on the basis of the evidence served in April of 2022.

On May 10, 2022, November 25, 2022, and December 12, 2022 the Tenant submitted additional of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was posted on the Landlord's door on December 14, 2022. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings. I note that the letter of March 31, 2022 was included in this evidence package and, as such, it was accepted as evidence for these proceedings.

On September 26, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, on September 26, 2022. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

Only testimony and documentary evidence that is relevant to my decision will be recorded in this decision.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

#### Issue(s) to be Decided

Is the Tenant entitled to compensation for the method in which this tenancy ended?  
Is the Tenant entitled to compensation for being without a kitchen?

#### Background and Evidence

The Landlord and the Tenant agree that:

- The tenancy began on March 01, 2021;
- The parties did not sign a tenancy agreement;

- The parties agreed that rent would be \$1,100.00 per month;
- The parties agreed that any money owed to the Tenant by the Landlord for wages and/or construction supplies would be applied to rent owed;
- The Tenant never paid money to the Landlord for rent during his tenancy, as his labour expenses exceeded the amount of rent due;
- No rent money is owing;
- The parties argued on March 24, 2021;
- During the argument the Landlord told the Tenant he had to move by March 31, 2021;
- Later in the day on March 24, 2021 the Landlord told the Tenant, via text message, that he did not need to move out of the unit;
- The Landlord sent the Tenant an email on March 31, 2021 in which she wrote, in part, "If you are saying that I forced you out which is completely untrue than technically you were to be out by 1:00 pm today"; and
- The Tenant moved out of the unit on April 01, 2021.

The Tenant stated that in spite of the text message the Landlord sent on March 24, 2021, in which she told him he did not need to vacate the rental unit, he opted to move out of the unit on March 31, 2021. He stated that he moved out of the unit because he is a single male and the Landlord could accuse him of "different things".

The Tenant is seeking compensation of \$3,200.00 for how this tenancy ended, which he characterizes as an "illegal eviction".

The Tenant is seeking compensation of \$1,600.00 for being without a fully functional kitchen between March 04, 2021 and March 31, 2021. In regard to this claim the parties agree that:

- At the Landlord's request, the Tenant removed the kitchen flooring and cabinets;
- The Tenant installed floor tile prior to vacating the rental unit, although the grouting was not complete;
- The Tenant had not re-installed cabinets prior to vacating the unit;
- The Tenant did not have use of a kitchen sink during the kitchen renovation; and
- The Tenant had use of a refrigerator and stove during the renovation.

### Analysis

On the basis of the undisputed evidence, I find that the parties argued on March 24, 2021 and that during this argument the Landlord told the Tenant he had to move by

March 31, 2021.

Section 44(1)(a) of the *Act* identifies various ways in which a landlord can end a tenancy. In all of these circumstances, a landlord is required to give written notice of the landlord's intent to end the tenancy, on the appropriate form. A landlord is not permitted to end the tenancy pursuant to section 44 of the *Act* by giving verbal notice. I therefore find that the Landlord did not end the tenancy pursuant to section 44 of the *Act* on March 24, 2021 when she told the Tenant he must vacate the unit by March 31, 2021 and the Tenant was not obligated to vacate the unit on the basis of that conversation.

On the basis of the undisputed evidence, I find that later in the day on March 24, 2021 the Landlord told the Tenant, via text message, that he did not need to move out of the unit. Even if the Tenant mistakenly believed that he had to vacate the unit on March 31, 2021 on the basis of the Landlord's verbal notice given earlier in the day, I find that he knew, or should have known, that he did not have to move out of the rental unit once he received this text message.

On the basis of the undisputed evidence, I find that on March 31, 2021 the Landlord sent the Tenant an email in which she wrote, in part, "If you are saying that I forced you out which is completely untrue than technically you were to be out by 1:00 pm today". On the basis of this email I find that the Tenant knew, or should have known, that he did not need to vacate the rental unit on the basis of the Landlord's verbal notice to vacate the unit.

In the letter dated March 31, 2021, the Tenant informs the Landlord that she "cannot evict me". In the letter the Tenant also declares that her behavior towards him has "become irreparable". On the basis of this letter, I find it reasonable to conclude that the Tenant understood that the Landlord did not have the right to end the tenancy on March 31, 2021 but that he was moving out of the unit because he no longer wished to live in the unit.

My conclusion that the Tenant moved out of the unit because he no longer wished to live in the unit is supported by the Tenant's testimony that he moved out because he is a single male and the Landlord could accuse him of "different things".

On the basis of the aforementioned findings, I find that the Tenant understood that he was not required to move out of the rental unit and that he moved out of the unit of his

own volition. I therefore find that he was not “illegally evicted” as the Tenant submits.

As the Tenant was not obligated to move out of the rental unit, I find he is not entitled to compensation for anything related to his decision to vacate the unit.

Section 28 of the Act entitles a tenant to the quiet enjoyment of the rental unit, which includes reasonable privacy; freedom from unreasonable disturbance; exclusive possession, subject to the landlord’s right of entry under the Legislation; and use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline #6, with which I concur, reads, in part:

*A landlord is obligated to ensure that the tenant’s entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.*

*Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.*

*In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises.*

.....

*A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.*

*A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.*

On the basis of the undisputed evidence, I find that the Landlord hired the Tenant to

remove the kitchen flooring and cabinets in the rental unit; to install new tile; and to install new cabinets. On the basis of the undisputed evidence, the Tenant was to be paid for this labor; that the kitchen renovation began on March 04, 2021; and was not completed when the Tenant vacated the unit on March 31, 2021.

In circumstances such as these, where the Tenant benefits financially from the renovation and, at least to some degree, has control over the timeline of the renovation, I find that the Tenant is not entitled to compensation for loss of quiet enjoyment for being without a fully functional kitchen for less than one month. I therefore dismiss the claim for \$1,100.00 for being without a kitchen.

I find that the Tenant has failed to establish the merit of his Application for Dispute Resolution and I dismiss his claim to recover the cost of filing this Application for Dispute Resolution from the Landlord.

### Conclusion

The Application for Dispute Resolution 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 *Act*.

Dated: January 09, 2023

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Residential Tenancy Branch