



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord, counsel of the landlord "counsel", tenant V.K. and the tenant's agent (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

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."

Both parties confirmed their email addresses for service of this Decision.

### Preliminary Issue- Service

The tenant testified, and counsel confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. Counsel submitted, and the tenant confirmed, that the landlord served the tenant with the landlord's

evidence package. I find that all parties have been served with the required documents in accordance with the Act.

### Preliminary Issue- Viability of Claim

The tenants' application for dispute resolution is based on the landlord's failure to use the subject rental property for the purpose stated on a two or four month Notice to End Tenancy.

The tenant testified that the landlord did not serve her with a two or four month Notice to End Tenancy.

Section 51 of the *Act* states:

**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) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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

(a)steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b)the rental unit is not 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 the case may be, from

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

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

[emphasis added]

Section 52 of the *Act* states:

**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.

[emphasis added]

The triggering event for the possibility of compensation under section 51 of the *Act*, is the service on the tenant of a written Notice to End Tenancy pursuant to section 49 of the *Act*. That Notice to End Tenancy must conform to the form and content requirements of section 52 of the *Act*. Section 52(e) of the *Act* states that when a notice to end tenancy is given by the landlord, it must be in the approved form. Therefore, to be eligible for compensation under section 51 of the *Act*, the tenant must have been served with a two, four or 12 month Notice to End Tenancy on the correct RTB Form. The tenant was not served with a Notice to End Tenancy; therefore, the tenant is not

entitled to compensation under section 51 of the *Act*. The tenant's application is therefore dismissed without leave to reapply.

As the tenant was not successful in this application for dispute resolution, the tenant is not entitled to recover the \$100.00 filing fee from the landlord.

The tenant testified that she signed a mutual agreement to end tenancy and a related contract. The tenant testified that she is seeking the landlord to comply with the contract. I cautioned the tenant that the residential tenancy branch may not have jurisdiction to hear a future claim pertaining to damages that don't arise from a breach of this Act, the regulations or a tenancy agreement as set out in section 67 of the *Act*. I make no findings on this point as such a claim is not properly before me. The tenant was advised that she may wish to seek legal advice.

### Conclusion

The tenants' 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 *Residential Tenancy Act*.

Dated: February 02, 2023

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Residential Tenancy Branch