



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNETC, FFT

### Introduction

The former Tenants (hereinafter the “Tenant”) filed an Application for Dispute Resolution on May 6, 2022 seeking compensation for the Landlords’ ending of the tenancy, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on January 17, 2023.

Both the Tenant and the Landlords (hereinafter, the “Landlord”) attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

At the outset of the hearing, the Landlord confirmed they received the Notice of Dispute Resolution Proceeding from the Tenant via registered mail, including the Tenant’s prepared evidence.

The Tenant stated they received a first package from the Landlord “in time”, yet they stated they did not receive the Landlord’s second package of evidence “within the two-week timeframe.” With reference to Rule 3.15 of the *Residential Tenancy Branch Rules of Procedure*, I find the Landlord served all evidence to the Tenant “not less than seven days before the hearing”, and there is no restriction on my consideration of all evidence the Landlord provided for this hearing.

### Issues to be Decided

Is the Tenant entitled to monetary compensation for the Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”), pursuant to s. 51 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

### Background and Evidence

Both parties provided a copy of the tenancy agreement in the evidence. They jointly signed the agreement on March 24, 2021, and March 25, 2021. The tenancy started on May 1, 2021 for a fixed term set to end on April 30, 2022. The tenancy agreement establishes that the rent was \$2,400 per month and this did not increase over the course of the tenancy.

In the hearing, the Tenant presented that the Landlord served the Tenant the Two-Month Notice on January 21, 2022. This set the end-of-tenancy date for April 30, 2022. The reason indicated on the document was that the Landlord or their spouse would occupy the rental unit. The Tenant did not formally dispute the Landlord issuing the Two-Month Notice.

In their testimony in the hearing, the Tenant presented the following timeline of events prior to the date they vacated the rental unit:

- February 8, they purchased their own condominium
- March 21, in their email response to the Landlord on “housing”, the Tenant responded that they would be moving out from the rental unit on April 23
- April 1, the Tenant withheld the monthly rent of \$2,400, as per s. 51(1.1) of the *Act*
- April 16, the Landlord inquired on a final walkthrough inspection of the rental unit
- April 22, the Tenant advised they could not do an early inspection prior to the end-of-tenancy date of April 30
- April 23, the Tenant moved out most of their personal property from the rental unit
- April 24, the Tenant returned to clean the rental unit, leaving some personal items behind in the rental unit
- April 25, the Landlord advised no walkthrough inspection was necessary, and the Landlord advised that they gained possession of the rental unit on this date – on this date, the Tenant removed all of their personal property from the rental unit, and provided the rental unit keys to the Landlord

The Tenant submitted the following emails in their evidence:

- April 24: the Landlord advised the rental unit is “in great condition”, and stated “I don’t think a walk through is needed”
- April 25: the Tenant notified the Landlord they did not have permission to enter, without 24 hours notice – they identified the date of April 23 to the Landlord “simply [as] . . . the day we were moving most of our things into our new home”
- April 25: the Landlord apologized and stated their intent was to help the Tenant in their move to their new home, and they “don’t need to worry about the conditions of the suite, and simply trying to take on cleaning duties ourselves” – the Landlord also advised their intention was to have the deposits returned to the Tenant as soon as possible
- April 25: the Tenant requested the additional amount of \$552.63 because the Landlord “entered [the Tenant’s] suite without notice and [the Landlord had] already begun to move [their] belongings into [the Tenant’s] suite” The Tenant also stated: “We are willing to overlook [the Landlord’s entry on April 24 without notice] and agree to end our tenancy early as long as you compensate us for the remaining days that we have paid you for.”
- April 25: the Landlord advised they had a discussion with the Tenant about this previously, and “you guys [*i.e.*, the Tenant] have vacated the suite, and returned the keys, and [the Landlord had] confirmed the walk-through is complete” – the Landlord can schedule the final inspection for April 30.

The Tenant submits that the Landlord’s entry to the rental unit on April 25 was not with 24-hour notice as required, nor did they agree to the Landlord’s access on that date. The Tenant stated to the Landlord that the actual end-of-tenancy date was thus April 24, and they claimed a rent return from the Landlord of \$552.63, being the pro-rated amount for the remaining days of April that they were not in possession of the rental unit.

The Landlord denied this request to the Tenant, as the Tenant presented in the hearing. According to the Tenant, the Landlord acknowledged their improper notice of entry, and then stated the Landlord’s own personal items should not yet have been in place in the rental unit.

The Tenant described having the Landlord set the final walkthrough inspection date for April 30; however, when the Tenant attended on that date the Landlord was not there.

The Landlord presented that they gave the Tenant 3 months’ notice about the end-of-tenancy date, and their aim at the end of the tenancy was to provide the Tenant with

more flexibility with respect to a move-out inspection, saving the Tenant an extra drive for that purpose. As stated, they had “no intention to rush the Tenant out the door, and they did not need to take the Tenant’s suite”. The Landlord’s position is that the Tenant notified them about the key left on the counter in the rental unit, and this was an indication that the Tenant had finalized their move-out, and the Tenant had agreed to the full return of their deposits. Further, they maintain the Tenant refused the offer of a move-out inspection for April 25, but then decided to attend for that purpose on April 30. This was after a message from the Tenant wherein the Tenant stated: ‘no, landlord, you waived the walkthrough already’.

The Landlord provided a written statement to summarize their position in this matter. They noted the apparently empty rental unit with the door open on April 24, when “[the Tenant] seemed to have moved out.” This meant they did not enter the rental unit on that date, after observing cleaning supplies in the unit, they “occupy the suite with [their] personal belongings.” Also, the Landlord never requested the Tenant to return the rental unit keys earlier than April 30. The Tenant advised they left the keys on the counter – this was the indication to the Landlord that “[the Tenant] ended the tenancy voluntarily by themselves.” They left the main entrance to the rental unit unlocked with the keys on the countertop, and “when [the Landlord] acknowledge the receipt of the keys, they immediately accused us of ending the tenancy early.” The Landlord also proposed that the Tenant could have the keys back and take more time with the rental unit, then do a final inspection on April 30. The Tenant declined this offer.

The Landlord also provided a record of their emails. On April 21 the Tenant advised they would return the keys “this Sunday”, being April 24, adding “we should be all out by Sunday.” An alternate text message from April 22 also confirms that the Tenant will leave the key at the rental unit for the Landlord on April 24.

### Analysis

The *Act* s. 7(1) provides for compensation to an affected party for resulting damage or loss where the other party has not complied with the *Act* and/or the tenancy agreement.

By s. 67 of the *Act*, I have authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this matter, the Tenant applied for compensation under s. 51(1) and s. 51(1.2) of the *Act*, seeking to recover the return of prorated rent, where they allege the Landlord took

possession of the rental unit 7 days earlier than the end-of-tenancy date set on the Two-Month Notice.

I find the basis for the Tenant's claim for compensation is that the Landlord unilaterally ended the tenancy on April 24, in advance of the set end-of-tenancy date of April 30. I find this claim is unreasonable and not supported. The Tenant submitted that the Landlord accomplished this by entering the rental unit without required notice, which constitutes a breach of the *Act*, then moving their own items into the rental unit before the tenancy had ended, which constitutes the Landlord's possession of the rental unit. I accept the Landlord was at the rental unit on April 24, 2022; however, I find the Tenant left the rental unit door open and unsecure, prompting the Landlord to investigate. Further, there is no evidence the Landlord moved into the rental unit on that day.

The Tenant gave vacant possession of the rental unit to the Landlord by returning the keys to the Landlord on April 25, 2022. I find the tenancy ended pursuant to s. 44(d) of the *Act*, by the actions of the Tenant on that date. I find the Landlord did not unilaterally end the tenancy in advance of the set end-of-tenancy date of April 30, 2022.

The *Act* s. 50 allows a tenant to end a tenancy early, when a tenant gives "at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice". That would entitle a tenant to a refund of any paid rent. The Tenant did not give such notice to the Landlord; rather, they vacated by leaving the key within the rental unit. On this basis, I find the Tenant is not entitled to compensation under the *Act*.

For the reasons above, I dismiss the Tenant's claim for compensation, without leave to reapply. Because the Tenant was not successful in this Application, I grant no reimbursement of the Application filing fee.

### Conclusion

I dismiss the Tenant's Application in its entirety, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: February 15, 2023

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Residential Tenancy Branch