



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant July 25, 2022 (the “Application”). The Tenant applied as follows:

- For compensation for monetary loss or other money owed
- To recover the filing fee

The Tenant appeared at the hearing. The Landlord appeared at the hearing with their cousin to assist. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlord confirmed receipt of the hearing package and one page of evidence from the Tenant. The Landlord testified that they did not receive further evidence from the Tenant. The Tenant testified that they served their evidence on the Landlord in person August 13, 2022. The Tenant did not submit proof of service. The Tenant confirmed receipt of the Landlord’s evidence and confirmed there were no issues with the timing of service.

In relation to the Tenant’s evidence, I am not satisfied it was served on the Landlord as required by rule 3.1 and 3.14 of the Rules and therefore exclude it pursuant to rule 3.17 of the Rules, other than the written tenancy agreement which I reviewed with the parties.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all admissible evidence provided. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

The Tenant submitted a written tenancy agreement with the previous owner of the rental unit and advised it is the accurate agreement. The Landlord disputed that there was a written tenancy agreement between the Tenant and previous owner of the rental unit. The Landlord acknowledged no new tenancy agreement was done up between the parties when the Landlord purchased the rental unit.

The parties agreed the Tenant moved out of the rental unit April 03, 2022.

I asked the Tenant to explain their reasons for seeking compensation. I found it difficult to understand the Tenant, and the Tenant found it difficult to understand me, given a language barrier. I understood from the materials submitted by the Tenant and what the Tenant said during the hearing that they are seeking compensation under section 51 of the *Act* based on the Landlord failing to follow through with the stated purpose of a notice to end tenancy.

Both parties agreed the Landlord never issued the Tenant a notice to end tenancy on an RTB form and only provided the Tenant a written "Moving Notice".

### Analysis

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...

(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...

It is only when tenants have been issued a notice to end tenancy on an RTB form under section 49 of the *Act* that they are entitled to compensation under section 51 of the *Act*. The Tenant was not issued a notice to end tenancy on the RTB form and therefore is not entitled to compensation under section 51 of the *Act*.

I note that the Tenant is not entitled to compensation under section 7 of the *Act* either. Section 7 of the *Act* states:

7 (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.**

The Tenant is not entitled to compensation for moving out of the rental unit pursuant to the Landlord's "Moving Notice" because the Tenant was required to mitigate their loss which included understanding their rights. The Tenant was not required to move out of the rental unit pursuant to the "Moving Notice" because the Landlord could only end the tenancy pursuant to a notice to end tenancy issued on an RTB form as stated in section 52 of the *Act*. The Tenant was expected to know that they did not have to move out pursuant to the "Moving Notice". Moving out in the absence of a valid notice ending the

tenancy was a failure by the Tenant to mitigate their loss because the Tenant could have simply continued living in the rental unit.

Given the Tenant has not been successful in the Application, the Tenant is not entitled to reimbursement for the \$100.00 filing fee.

The Application is dismissed without leave to re-apply.

### Conclusion

The Application is dismissed without leave to re-apply.

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: March 06, 2023

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Residential Tenancy Branch