



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNETC, RPP, FFT

### **Introduction**

This hearing dealt with an application by the tenant for a monetary order for compensation for loss under the *Act* and for the recovery of the filing fee. The tenant also applied for the return of her property. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The parties acknowledged receipt of each other's evidence and gave sworn testimony.

### **Issue(s) to be Decided**

Is the tenant entitled to compensation, the return of her property and the recovery of the filing fee?

### **Background and Evidence**

The landlord purchased the rental unit and gained possession of the unit, on April 08, 2023. The tenant was already in occupation of the unit. The parties could not agree on the amount of rent and whether a security deposit had been paid. The landlord testified that the rent was \$1,200.00 per month while the tenant stated that it was \$1,000.00 per month. The landlord testified that a security deposit was not transferred to her when she purchased the unit.

On April 30, 2022, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property. The reason indicated was that the landlord or the landlord's spouse intended to occupy the rental unit. The effective date of the notice was June 30, 2022.

The tenant failed to pay rent on May 01, 2022, and on May 04, 2022, the landlord served the tenant with a 10-day notice to end tenancy for non payment of rent.

The tenant disputed both notices and then decided to move out anyways. On May 30, 2022, the tenant gave the landlord notice to end the tenancy effective June 30, 2022.

On September 12, 2022, a hearing was conducted to address the tenant's application to dispute both notices to end tenancy. Since the tenant had moved out, the matter was dismissed. The tenant agreed that she did not pay rent for the months of May and June 2022.

The tenant informed the landlord that she would start moving her possessions out of the house on June 08, 2022, and did so. The tenant moved out all her belongings except for a mattress. The tenant returned on June 24, 2022 to do a move out inspection. The landlord placed the mattress just outside the front door. The parties got into an argument about the security deposit and the tenant left without taking her mattress.

The tenant alleged that the landlord was renting the unit on Air bnb and filed advertisements that show that the landlord was renting out a room in the two bedroom suite. The landlord confirmed that she advertises the availability of a room in her home and stated that when she has a renter, she shares the kitchen with the renter. The landlord also stated that she is a full-time online student and often visits her sister in California at which time she has a caretaker in her home. The landlord maintained that she lives in the home and agreed that sometimes she rents out a room in her suite.

### **Analysis**

The tenant was provided the opportunity to remove her mattress on June 24, 2022 and did not do so. After this date, the tenant could have contacted the landlord to retrieve her mattress and failed to do so. At the hearing on September 12, 2022, the tenant did not ask for the return of her mattress. Based on the testimony of both parties, I find that the tenant abandoned her mattress at the rental unit when she failed to retrieve it when she had the opportunity to do so.

Pursuant to Section 51 of the *Residential Tenancy Act*, a tenant who receives a notice to end tenancy under Section 49 which is for landlord's use of property and the rental unit is not used for the stated purpose for at least six months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

In this case, the tenant received the notice to end tenancy for landlord's use of property under Section 49. The tenant believes that the landlord is using the suite for short term rentals and has filed copies of advertisements describing the availability of the suite for short term rentals.

The advertisements indicate that a private room is available for rent in a two-bedroom suite. The landlord agreed that she rents out a room on a short-term basis but maintained that she moved into the rental unit at the end of July 2022 and continues to reside there as of the date of this hearing.

Based on the above facts I find that the landlord rents out one room in her two-bedroom unit on a short term basis and shares the kitchen with the occupant who rents the room.

Section 4 of the *Residential Tenancy Act*, addresses what the *Act* does not apply to. It states that the *Act* does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

Therefore, I find that the landlord moved into the rental unit within a month of the end of tenancy and has used the unit for at least six months after the tenant moved out and continues to use it, for the purpose stated on the notice to end tenancy. Accordingly, I find that the tenant has not proven her case and I dismiss her application without leave to reapply. The tenant must also bear the cost of filing this application.

### **Conclusion**

The tenant's application is dismissed in its entirety.

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: March 06, 2023

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Residential Tenancy Branch