



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      MNDCT, MNETC, FFT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on September 28, 2022, wherein the Tenant sought monetary compensation from the Landlord in the amount of \$35,780.00 including compensation pursuant to section 51(2) of the *Residential Tenancy Act*, compensation for the cost of cleaning and movers, increased rent and recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for teleconference at 1:30 p.m. on June 26, 2023. Both parties called into the hearing. The Tenant called in on his own behalf. The Landlord called in, as did two property managers, Z.G. and M.M.

### Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Should the Tenant recover the filing fee?

### Background Evidence

Both parties confirmed the Landlord did not issue a 2 Month Notice to End Tenancy for Landlord's Use on the prescribed form pursuant to sections 49 and 52 of the *Act*. Rather, the Landlord asked the Tenant to move from the rental unit indicating they might have family move in. The Tenant agreed to this request and moved from the rental property. At some point in time the Landlord re-rented the rental unit.

## Analysis

A tenancy can only be ended in accordance with the *Act*. Section 44 of the *Act* sets out how a tenancy ends and reads as follows:

### **How a tenancy ends**

**44** (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or **landlord gives notice to end the tenancy** in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) **section 49** [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

In this case, the Tenant claims the Landlord ended the tenancy pursuant to section 44(1)(a)(v). As noted, this section references section 49 which is the section which

allows a Landlord to end a tenancy for Landlord's use, on two month's notice to the tenant, such as when a Landlord or a close family member intends to occupy the rental unit, or the property has sold, and the new owner has asked for vacant possession. For a Landlord to end a tenancy pursuant to section 49, the Notice to end tenancy must comply with section 52 as set out in section 49(7)

#### **Landlord's notice: landlord's use of property**

49...(7)A notice under this section **must comply with section 52** *[form and content of notice to end tenancy]* and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

***[emphasis added in bold italics]***

Section 52 reads as follows:

#### **Form and content of notice to end tenancy**

- 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 in bold italics]***

In this case the Landlord verbally asked the Tenant to vacate the rental unit and the Tenant agreed. The Landlord did not make this request in writing and did not use the approved form; as such, the tenancy ended by mutual agreement.

Compensation pursuant to section 51(2) is only available to a Tenant who receives a 2 Month Notice to End Tenancy for Landlord's Use on the approved form pursuant to sections 49 and 52 of the *Act*.

**Tenant's compensation: section 49 notice**

**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) paid rent before giving a notice under section 50, the landlord must refund the amount paid.

(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.

(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 applicable, from

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

(b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

***[emphasis added in bold italics]***

As the Tenant did not receive a written 2 Month Notice to End Tenancy pursuant to section 49 in the *approved* form and agreed to move out on the Landlord's verbal request, the Tenant is not entitled to compensation pursuant to section 51(2).

Even in the event the Tenant had been entitled to compensation pursuant to section 51(2), I would have denied their claim for moving and cleaning expenses and the increased cost of rent for their new accommodation. The 12 months' rent payable pursuant to section 51(2) is intended to compensate a tenant fully for their increased costs when a tenancy ends pursuant to section 49 and the landlord does not use the property for the stated purpose; a tenant cannot request additional compensation for such expenses such as moving expenses or their increased rent. As such I also dismiss their claim for these expenses.

Having been unsuccessful in this application the Tenant is also not entitled to recover the filing fee.

### Conclusion

The Tenant's claim 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: July 6, 2023

---

Residential Tenancy Branch