



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL, MNDCT, FFT

### Introduction

The Tenant filed an Application for Dispute Resolution on April 18, 2023 seeking:

- cancellation of the Two-Month Notice to End Tenancy for Landlord's Use (the "Two-Month Notice") served by the Landlord on April 18, 2023'
- compensation for monetary loss or other money owed
- reimbursement of the Application filing fee.

The matter proceeded by way of a conference call hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on August 1, 2023. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The Tenant attended the hearing; the Landlord did not attend.

### Preliminary Matter - service of the Notice of Dispute Resolution Proceeding to Landlord

To proceed with this hearing, I must be satisfied that the Tenant made a reasonable attempt to serve the Landlord with the Notice of Dispute Resolution Proceeding for this hearing. This means the Tenant must provided proof that they served the document at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

In the hearing, the Tenant described serving the Landlord in person on April 27, 2023, at around 7pm in the evening. This included a copy of the evidence they intended to rely on for this hearing.

The Tenant notified the Landlord of amendments to their Application – that is, updated addresses when the Tenant relocated after their Application, as well as their claim for compensation – via registered mail. They provided a tracking number to show this.

The Tenant in the hearing clarified that they provided the same evidence to the Residential Tenancy Branch and the Landlord. The Tenant had no communication separately from the Landlord about this hearing, though they remain renting from the Landlord at this rental unit property.

I accept the Tenant's evidence that they served the Notice of Dispute Resolution Proceeding, including their evidence, to the Landlord, in person, and via registered mail at the Landlord's address for service. This is sufficient for the purposes of the *Act*. Based on the submissions of the Tenant, I accept they served notice of this hearing and their evidence in a manner complying with s. 89(1)(a) and (c) of the *Act*, and the hearing proceeded in the Landlord's absence.

#### Preliminary Matter – tenancy ended

The Tenant provided that they moved out from the rental unit on May 16, 2023. They received their security deposit returned to them from the Landlord on May 9, 2023, and that was documented with both parties' signatures on that date as shown in the Tenant's evidence.

Given that the tenancy ended, and the Tenant moved out on their own volition, I find the validity of the Two-Month Notice is not at issue. I find the final end-of-tenancy date was May 16 as the Tenant stated in the hearing. I dismiss this issue from the Tenant's Application, without leave to reapply.

#### Preliminary Matter – compensation to Tenant for Two-Month Notice

On July 11, 2023, the Tenant provided three images to the Residential Tenancy Branch as evidence for this hearing. These are three images of a sign placed on the rental unit property, showing that property as for sale. The Tenant described this in the hearing, and they took these pictures when visiting their former neighbour. In the Tenant's mind, this equates to the Landlord selling the property soon after this tenancy ended, and that is in contrast to the reason the Landlord provided on the Two-Month Notice, i.e., precisely that they/their family member was going to live in the rental unit.

I considered amending the Tenant's Application in the hearing, in order to encompass this scenario which the *Act* provides is a legitimate reason for granting a tenant further compensation. However, without the Landlord present to speak to that issue, or having the opportunity made available to them via an Application or amendment, it is prejudicial to consider that issue. In sum, the Landlord would not have known the Tenant was making that claim for further compensation, and that means they were not given the opportunity to answer to that claim in a fair process.

I decline to consider the issue of further compensation to the Tenant by reason of the Landlord's not accomplishing the purpose for which they ended the tenancy. The Tenant is free to apply separately to the Residential Tenancy Branch if they wish to pursue that issue further.

#### Issues to be Decided

Is the Tenant entitled to compensation for monetary loss/other money owed, pursuant to s. 67 of the *Act*?

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

#### Background and Evidence

The Tenant did not provide a copy of the tenancy agreement. According to the Tenant, they signed an agreement with the Landlord but then the Landlord did not provide a signed copy to the Tenant. The first full month of the tenancy was September 2021. The Tenant would pay their rent on the 15<sup>th</sup> day of each month, for that following full month's rent. This was \$1,500 per month for the entire duration of the tenancy.

In 2023, the Tenant paid the following months, in full: January, February, March, and April 2023. The Tenant did not pay rent on May 15<sup>th</sup>, due to their imminent move out from the rental unit on May 16. To be clear: the Tenant paid a full month of rent on April 15, 2023, and that would be the payment of the following month's rent in full, i.e., May 2023.

They asked the Landlord directly about receiving a final month's rent returned to them, in line with the Landlord serving the Two-Month Notice, and as granted to any tenant in that situation, as set out in the *Act*. The Tenant stated that the Landlord's direct response to this query was "no."

### Analysis

The Landlord ended the tenancy via the Two-Month Notice served to the Tenant on April 15, 2023.

The *Act* s. 51(1) provides that a tenant who receives a two-month notice is entitled to receive "the equivalent of one month's rent payable under the tenancy agreement."

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

From the Tenant's affirmed testimony in the hearing, I find they had a tenancy agreement with the Landlord. I find as fact that the Tenant paid \$1,500 per month. This is based on the Tenant's statements in the hearing, affirmed under oath, and the fact that they received \$750 in return from the Landlord for the security deposit amount that more likely than not is one-half of a full month's rent amount.

I find as fact, as per the Tenant's testimony, that they paid the rent for the full month of May – at \$1,500 – on April 15, 2023. They did not receive this as a refund from the Landlord when the tenancy ended.

In sum, the Tenant did not receive one month's full rent as compensation in line with the Landlord serving the Two-Month Notice. This is required as per s. 51 of the *Act*; therefore, the Landlord violated this section of the *Act* by not giving this amount to the Tenant.

For this reason, I order compensation to the Tenant for \$1,500. The Tenant was successful in this Application; therefore, I add the \$100 Application filing fee to this amount.

Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$1,600 for compensation set out above and the recovery of the filing fee for this hearing application. I provide this Monetary Order in the above terms and the Tenant must serve the Monetary Order to the Landlord as soon as possible. Should the Landlord fail to comply with the Monetary Order, the Tenant may file it in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

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: August 1, 2023

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Residential Tenancy Branch