



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL MNRL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent pursuant to section 67?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

### Background and Evidence

The tenancy agreement started on February 16, 2018 with monthly rent of \$3,100.00, payable on the 16<sup>th</sup> day of each month. The tenancy agreement was a fixed term tenancy with a stated ending date of February 15, 2019. The landlord held a \$1,500.00

security deposit. Both parties agree that the entire security deposit has been return to the tenants.

The landlord's sent the tenants an email on December 15, 2018 which stated:

I just got the owner's message that she is start selling the townhouse on Feb 16, 2019 when the lease expired, you may choose to renew the lease ( Landlord will not increase rent but hoping you will operate for the showing) or to move out if you want.

The tenants testified that they interpreted this email as a Two Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 49 of the *Act*. The landlord did not provide the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property in the approved Residential Tenancy Branch form. The tenants testified that requested a Two Month Notice to End Tenancy for Landlord's Use of Property in the approved but the landlord did not deliver such a form.

The landlord and the tenants executed a Contract of Purchase and Sale regarding the property on February 20, 2019 wherein the tenants agree to purchase the property from the landlord. The Contract of Purchase and Sale stated the parties agreed that the tenancy would terminate on the date of closing of the sale, being March 29, 2019.

The tenants paid rent for the period of February 16, 2019 to March 15, 2019. The tenants did not pay any rent after March 15, 2019. The landlord is requesting payment of the rent from March 16, 2019 to March 29, 2019. The tenants argued that they were entitled to a free month of rent pursuant to section 51 of the *Act*.

### Analysis

The tenants argued that they were entitled to one month of free rent based upon section 51 of the *Act*. Specifically, the tenants argued that the email sent to the tenants on December 15, 2018 constituted a Two Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 49 of the *Act*. However, the email does not provide notice that the tenancy is ending. Rather, it says that the property is being sold and the tenants may continue their tenancy or end it at their choice.

Furthermore, section 49 of the *Act* states that a notice to end tenancy must comply with the provisions in section 52 regarding the form and content of the notice.

Specifically, section 52 states the following requirements:

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.

This email does not comply with the form and content rules of section 52. The email is not signed by the landlord, nor even written by the landlord. Further, the notice does not state the address of the rental unit. In addition, it does not state the effective date of the notice, and the notice is not in the approved form.

Furthermore, section 49(7) states that the notice to end tenancy must provide the name and address of the purchaser which this email does not.

In addition, section 49(5) states the following requirements for a notice to end tenancy for sale of the property:

- (5) A landlord may end a tenancy in respect of a rental unit if
  - (a) the landlord enters into an agreement in good faith to sell the rental unit,
  - (b) all the conditions on which the sale depends have been satisfied, and
  - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
    - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
    - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

In this matter there was no evidence presented that the purchaser provided written notice that they wanted the tenants to vacate the rental unit. Furthermore, such notice would be nonsensical as the tenants are in fact the purchasers.

For the above-stated reasons, I find that the tenants have failed to prove that the landlord has provided a notice to end tenancy. In the absence of a notice to end tenancy pursuant to section 49 of the *Act*, I find that the tenants were not entitled to a month of free rent pursuant to section 51 of the *Act*.

Based upon the testimony of the parties and the terms of the tenancy agreement, I find that the tenants were obligated to pay the monthly rent in the amount of \$3,100.00, on the 16<sup>th</sup> day of each month. In addition, even though the tenancy agreement stated that the tenancy expired on February 15, 2019, section 44(3) of the *Act* states that, if the landlord and tenant do not enter a new tenancy agreement at the expiration of a fixed term tenancy agreement, then the parties are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms. Accordingly, I find that the tenancy agreement continued on a month to month basis after February 15, 2019 and the tenants had an obligation to pay \$3,100.00 per month in rent up to and including the termination of the tenancy agreement on March 29, 2019, the termination date agreed upon in the Contract of Purchase and Sale.

I find that the tenants have not paid rent from March 16, 2019 to March 29, 2019. Section 71(1) of the *Act* states that "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results." Pursuant to section 71(1), I find the landlord is entitled to a monetary award for unpaid rent from March 16, 2019 to March 29, 2019. I find that the per diem rate of rent is \$100.00 (monthly rent of \$3,100.00 divided by 31 days). Accordingly, I find that the landlord is entitled to a monetary award of \$1,400.00 for unpaid rent (fourteen days at per diem rate of \$100.00 per day).

Since the landlord has been successful in this matter, I award the landlord reimbursement of the \$100.00 filing fee.

Accordingly, I grant the landlord a monetary order for \$1,500.00, calculated as set forth below.

<u>Item</u>	<u>Amount</u>
Unpaid rent from March 16, 2019 to March 29, 2019	\$1,400.00
Filing fee	\$100.00
Total	<b>\$1,500.00</b>

Conclusion

I grant the landlord a monetary order in the amount of **\$1,500.00**. If the tenants fail to comply with this order, the landlord may file the order in the Provincial Court to 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 23, 2019

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Residential Tenancy Branch