



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT, MNDCT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on July 24, 2019 (the "Application"). The Tenants sought compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenants sought \$15,000.00, being 12 months of rent, pursuant to section 51 of the *Residential Tenancy Act* (the "Act") for the Landlord failing to follow through with the stated purpose of a notice to end tenancy issued under section 49 of the *Act*.

This matter came before me for a hearing November 01, 2019 but was adjourned. An Interim Decision was issued November 01, 2019. This decision should be read with the Interim Decision.

The Tenants appeared at the adjourned hearing with their cousin to assist given a language barrier. The Landlord did not appear at the adjourned hearing. I proceeded in the absence of the Landlord. I am satisfied based on RTB records that the adjourned hearing documents were sent to the Landlord November 06, 2019. Further, at the first hearing, the parties were told to call the RTB if they did not receive a Notice of Hearing with the Interim Decision.

I explained the hearing process to the Tenants and their cousin who did not have questions in this regard. The Tenants and their cousin provided affirmed testimony.

At the first hearing, I was not satisfied the Tenants' evidence was served on the Landlord. Nor was I satisfied the Landlord's evidence was served on the Tenants.

Given the issues with service of the evidence, I allowed both parties to re-serve their evidence on the other party prior to the adjourned hearing as follows:

Given the issues with service of the evidence, I allowed both parties to re-serve their evidence on the other party. The parties must re-serve their evidence on the other party if they want me to consider their evidence at the next hearing. **The parties must serve their evidence within three weeks of the date of this decision.** The parties must serve their evidence in accordance with section 88 of the Residential Tenancy Act (the “Act”). The parties should obtain and submit evidence showing they served the other party with their evidence. The Landlord is only required to serve one package of evidence on the Tenants.

Both parties can submit further evidence prior to the next hearing. However, all evidence submitted must be served on the other party.

The Tenants, through their cousin, testified that they served their evidence on the Landlord by registered mail December 04, 2019. The Tenants provided Tracking Number 1. I looked this up on the Canada Post website which shows the Landlord signed for the package December 05, 2019.

The Tenants, through their cousin, testified that they never received the Landlord’s evidence.

The Interim Decision was issued November 01, 2019. RTB notes show the Interim Decision was mailed to the parties November 06, 2019. The Tenants should have had the Interim Decision by November 11, 2019. The Tenants did not re-serve their evidence on the Landlord until December 04, 2019, more than a month after the date of the Interim Decision and more than three weeks after they would have received the Interim Decision. I find the Tenants did not comply with the direction to re-serve their evidence within three weeks of the date of the Interim Decision. The Tenants did not explain why they did not comply with the direction in the Interim Decision.

The Tenants should have served their evidence on the Landlord prior to the first hearing and should have provided sufficient evidence of service at the first hearing. The Tenants did not do so and were given a second chance to serve their evidence on the Landlord within three weeks of the Interim Decision. The Tenants did not comply with this direction. I exclude the Tenants’ evidence given they did not comply with the direction in the Interim Decision.

I am not satisfied the Landlord's evidence was served on the Tenants as required by the Rules of Procedure (the "Rules") and Interim Decision. Further, the Landlord did not appear at the adjourned hearing to present the evidence as required by rule 7.4 of the Rules. I have not considered the Landlord's evidence.

The Tenants were given an opportunity to present relevant oral evidence and make relevant submissions. I have considered all oral testimony of the Tenants. I will only refer to the evidence I find relevant in this decision. The Landlord did not provide testimony that is relevant to the substantive issue before me during the first hearing and therefore I have not considered the Landlord's testimony below.

#### Issues to be Decided

1. Are the Tenants entitled to compensation under section 51 of the *Act*?
2. Are the Tenants entitled to reimbursement for the filing fee?

#### Background and Evidence

The Tenants, through their cousin, testified as follows.

There was a written tenancy agreement between the Landlord and Tenants. The tenancy started July 01, 2015 and was for a fixed term of one year. The tenancy then became a month-to-month tenancy. Rent was \$1,250.00 at the end of the tenancy. Rent was due on the first day of each month.

The parties agreed at the first hearing that the tenancy ended June 30, 2018.

The Tenants, through their cousin, further testified as follows.

In April of 2018, the Landlord tried to increase their rent by \$75.00 starting May 01, 2018. The Tenants said they needed more notice of the rent increase. On May 07, 2018, the Landlord asked the Tenants to move without giving proper notice. The Landlord asked the Tenants to vacate by June 30, 2018. The Landlord said she had family moving into the rental unit. The Tenants did move June 30, 2018.

A written notice to end tenancy was served on the Tenants in person May 07, 2018.

The Landlord showed the rental unit to non-family members during the tenancy and rented it to non-family members once the Tenants vacated.

### Analysis

The Tenants testified that a notice to end tenancy for the Landlord's use of the property was served on them May 07, 2018. Therefore, the legislation in force on that date applies. Section 51 of the *Act* at that time stated:

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) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is **the equivalent of double the monthly rent payable under the tenancy agreement.** (emphasis added)

I note at the outset that the Tenants are not entitled to 12 times the monthly rent. At most, the Tenants are entitled to \$2,500.00, two times the monthly rent.

It is the Tenants as applicants who have the onus to prove the claim pursuant to rule 6.6 of the Rules.

The Tenants have provided verbal testimony about the tenancy agreement and notice to end tenancy. The Tenants have also provided verbal testimony about what the Landlord did with the rental unit once they vacated.

I am not satisfied based on verbal testimony alone that the Tenants are entitled to compensation under section 51 of the *Act*. I would expect tenants to submit some documentary evidence to support their claim in this type of application. Here, the Tenants' documentary evidence is not admissible as they did not re-serve it in accordance with the direction in the Interim Decision. Therefore, I have no documentary evidence before me to support the verbal testimony of the Tenants. In the circumstances, I am not satisfied the Tenants have met their onus to prove they are entitled to compensation under section 51 of the *Act*.

Given the Tenants were not successful, I decline to award them reimbursement for the filing fee.

### 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: January 22, 2020

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Residential Tenancy Branch