



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT

### Introduction

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

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- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issue- Notice to End Tenancy

At the outset of the hearing the tenant advised that the previous owners of the property provided him with a document from the realtor on December 4, 2020 that requested that he move out by February 28, 2021. The tenant testified that there was further correspondence by text message and email from the landlord confirming that the tenant moved out by February 28, 2021. The tenant moved out on February 1, 2021.

### Analysis

Section 51(1) of the Act requires that a landlord, **who gives a notice under section 49, including the form of notice that is the subject of this application**, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (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 twelve times the monthly rent payable under the tenancy agreement.

I asked the tenant three times if the letter from the realtor was the only written request he received to move out, the tenant confirmed that it was each time. I referred to section 52 and explained it to the tenant:

### **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.

After I explained the above section, the tenant then suddenly changed his testimony and stated that he had received a Two Month Notice to End Tenancy for Landlords Use of Property by email. The tenant spent five minutes looking through his emails and stated an email copy was sent on December 11, 2021. However, the tenant was unable to provide me the date of the notice or effective date despite me asking him three times. I spent a large portion of the hearing explaining the crucial and vital nature of this document to the tenant. The Notice is not a trivial piece of information. In addition, I also explained Rule 3.14 and 3.17 from the Residential Tenancy Branch Rules of Procedure which states:

#### 3.14 Evidence not submitted at the time of Application for Dispute Resolution:

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

#### 3.17 Consideration of new and relevant evidence :

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence. The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

The tenant stated that he had this document since December but did not submit it. I found the tenants testimony to be contradictory, erratic and illogical and could not be

relied on. The landlord's documentary evidence does not reflect a notice other than the letter from the realtor requesting the tenant move out. As a result of there not being the prescribed notice to end tenancy before me, but only a written request from the buyers to the vendors, the tenant is not entitled to any compensation.

### Conclusion

The tenant's application is dismissed in its entirety 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: August 17, 2021

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A)  
OF THE RESIDENTIAL TENANCY ACT ON September 17, 2021  
AT THE PLACES INDICATED.

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Residential Tenancy Branch