



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC, MNDCT, FFT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on August 29, 2022, wherein the Tenant sought an Order that the Landlord comply with the *Residential Tenancy Act* (the "Act") the *Residential Tenancy Regulation* and/or the tenancy agreement, monetary compensation from the Landlord in the amount of \$1,050.00 including compensation pursuant to section 51(2) of the *Act* and recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for 11:00 a.m. on January 17, 2023. Only the Tenant called into the hearing. The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 11:20 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenant's hearing package. The Tenant testified that she personally served the Landlord with the Notice of the Hearing and her the Application by posting the documents to the Landlord's door on August 30, 2022. She further testified that she took a photo of this, however, she did not submit the photo in evidence before me. I accept the Tenant's affirmed testimony that the Tenant served the Landlord by posting the Application to the Landlord's door on August 30, 2022. Section 90 of the *Act* provides that documents served in this way are deemed served three days later; as such, I find the Landlord was served with Notice of the Application on September 2, 2022 and I proceeded with the hearing in his absence.

### Preliminary Matter

Hearings before the Residential Tenancy Branch are conducted in accordance with the principles of natural justice and the *Residential Tenancy Rules of Procedure*. Rule 2.2 provides that a claim is limited to what is stated on the application. This Rule is a codification of the principle of natural justice which provides that a party to proceeding has the right to know the claim against them as well as the right to receive and meaningfully respond to any evidence submitted by the other party as well as an opportunity to be heard. To allow a party to expand their claim or otherwise seek additional relief at hearing offends both the *Rules* and this principle.

During the hearing the Tenant attempted to expand her claim, and provide testimony and submissions with respect to matters which were not set out in her Application. I explained to the Tenant that her claim was limited to that which was stated on her Application, as she did not give the Landlord proper notice of such other requests.

### Issues to be Decided

1. Should the Landlord be ordered to comply with the *Act*, the *Regulations* and/or the tenancy agreement?
2. Is the Tenant entitled to monetary compensation from the Landlord pursuant to section 51(1) of the *Act*?
3. Should the Tenant recover of the filing fee

### Background and Evidence

At the outset of the hearing the Tenant stated that she was no longer living in the rental unit, although she claimed that her personal possessions remained there.

On the Tenant's Application she indicated that she sought the following relief:

I received a text message from my landlord on August 14, 2022, requesting that I move out of my suite by the end of August, 2022, so that the landlord could use the suite himself. He later told me that he intended to use the suite as an office. I am requesting that the landlord give me the four months notice required when he is converting the suite for a non-residential purpose, and that he use the applicable residential tenancy form to give me this notice in writing. Also the landlord may be required to give me, the tenant 1 months rent or more.

The Tenant also indicated that she sought monetary compensation from the Landlord as follows:

<input checked="" type="checkbox"/> I want compensation from the landlord for monetary loss under the Act, Regulations or tenancy agreement	Total amount you are seeking: \$ <b>950</b>
Please describe the monetary loss(es): I am requesting not to pay one month of rent as part of the 4 months notice to end tenancy, as per residential tenancy guidelines.	

### Analysis

As discussed during the hearing a tenancy may only be ended in accordance with the Act. Section 44 provides 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 indicated she received a text message from the Landlord on August 14, 2022 wherein he asked her to move from the rental unit so that he could occupy the unit. She further writes that he then told her he intended to convert the unit to non residential use.

The Tenant requests that the Landlord be ordered to serve a formal notice to end tenancy. There is no such authority under the *Act*. A Landlord may ask a tenant to move from a rental unit, however until they issue a formal notice, such a request is not valid.

In all cases, a Landlord's notice to end tenancy must comply with section 52 which reads as follows:

**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**]

The Tenant also seeks a free months' rent pursuant to section 51(1) which reads as follows:

**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.

As the Tenant has not received a formal notice to end tenancy pursuant to section 49 of the *Act*, she is not entitled to compensation pursuant to section 51. Consequently her request for related compensation is dismissed.

Having been unsuccessful in her Application, the Tenant is not entitled to recover the filing fee.

Conclusion

The Tenant's Application 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: February 2, 2023

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Residential Tenancy Branch