



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      **CNR, MNDCT, FFT**

### Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55;
- A monetary order for damages or compensation pursuant section 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing and the landlord attended the hearing accompanied by a support worker.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

### Preliminary Issue

The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package on November 27, 2022.

The landlord uploaded evidence to the Residential Tenancy Branch's dispute access site the day before the hearing and the tenant testified he did not receive a copy of it. The reason the landlord did not exchange her evidence with the tenant earlier was because she didn't have the tenant's forwarding address. I determined that the landlord's evidence was not provided to the Residential Tenancy Branch and to the

tenant/applicant at least 7 days before the hearing and as a consequence, I determined that the landlord's documentary evidence would be excluded from consideration in this decision.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities be upheld or cancelled?

Is the tenant entitled to compensation of a month's rent?

Can the tenant recover the filing fee?

Background and Evidence

The parties agree on the following facts. The tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on November 2, 2022. The tenant vacated the rental unit on November 15<sup>th</sup> and the parties agreed that the landlord could retain the tenant's \$500.00 security deposit in lieu of rent for the period from November 1 to November 15. The landlord testified that she is not seeking any further payment of rent from the tenant although she alleges rent from previous months was not paid.

The landlord also confirms she does not require an Order of Possession. She has regained possession of the rental unit from the tenant.

The tenant testified that he should be compensated with the equivalent of a month's rent (\$1,000.00) because the landlord took the rental unit back for her own use.

According to the tenant, there are 2 residences on the property, the landlord's and his own. They agreed to switch residences in February 2022. In July, 2 months before the switch, the landlord wanted the tenant to help build a shed to store her belongings. The tenant built it for her and after it was built the landlord changed her mind. The landlord gave the tenant a mutual agreement to end the tenancy which the tenant denies fully signing. The tenant alleges the landlord "tricked" him into agreeing to end the tenancy by covering the upper part of the document with her hand. As the landlord was going to move into the unit vacated by him, the tenant is entitled to a month's rent in compensation.

The landlord testified that the shed required extensive repairs and the deal was for her to purchase the material and the tenant would do the labour. However, the foundation to the shed was broken and the landlord decided it would be better to not repair it.

Regarding the mutual agreement to end tenancy, the tenant snatched it from her hand and read it before signing it. It was the tenant who noted that he would move out on

December 1<sup>st</sup>. The tenant did not pay rent for the month of November, and she served him with the notice to end tenancy for unpaid rent on November 2<sup>nd</sup>.

Both parties agree that the tenant was not served with a 2 Month Notice to End Tenancy for Landlord's Use. The only eviction given to the tenant was the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities.

### Analysis

I find this tenancy ended on November 15, 2022 pursuant to section 44(1)(f). As such, the tenant's application seeking to cancel the notice to end tenancy is dismissed without leave to reapply.

Section 55(4) requires that the director may grant an order requiring repayment of rent when a tenant files an application to cancel a notice to end tenancy for unpaid rent and it is dismissed. The landlord acknowledged she has been adequately compensated for November's half month of rent by retaining the tenant's security deposit. There will be no order requiring repayment of rent from November 1 to November 15, 2022.

The tenant seeks compensation because the landlord decided to occupy the rental unit after he moved out. The only provision under the Act that provides for compensation of a month's rent falls under section 51(1) of the Act which states:

#### **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.

In the matter before me, the tenant acknowledged that he did not receive a notice to end tenancy under section 49, (a 2 Month Notice to End Tenancy for Landlord's Use.) The only notice to end tenancy he received was the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities, served under section 46.

As stated in section 51(1), I can only order compensation to the tenant when the tenant receives a notice to end tenancy under section 49. There is no provision under section 46 [Landlord's notice: non-payment of rent] where the landlord is obligated to compensate the tenant. In other words, if the tenant is not served with a 2 Month Notice to End Tenancy for Landlord's Use, the tenant is not entitled to compensation.

I find the tenant was not served with a 2 Month Notice to End Tenancy for Landlord's Use under section 49 and is therefore not entitled to compensation under section 51(1). Consequently, the tenant's application is dismissed without leave to reapply.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

The 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: March 16, 2023

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Residential Tenancy Branch