



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

MNDC, FF

### **Introduction**

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* for Orders as follows:

1. A Monetary Order for compensation equivalent to one month's rent pursuant to a Section 49 Notice to End Tenancy For landlord's Use – sale of property - Section 51;
2. A Monetary Order for interest on a security deposit not provided by the landlord - Section 67
3. An Order to recover the filing fee for this application - Section 72.

### **Issue(s) to be Decided**

Is the tenant entitled to compensation under Section 51 of the Act, pursuant to a Section 49 Notice to End, equivalent of one month's rent payable under the tenancy Agreement?

Is the tenant entitled to a monetary order for unpaid interest on a security deposit?

### **Background and Evidence**

The tenancy began on December 01, 2003 and ended when the tenant vacated on June 30, 2010. Rent in the amount of \$1300 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$650, which was paid back to the tenant, minus the interest due.

The parties provided and agree on the following timelines, unless indicated.

Fall 2009 – tenant was advised the property would be listed for sale in the spring

April 20, 2010 – tenant verbally advised that the sale would occur and that a realtor would contact them.

June 07, 2010 – tenant is advised by new owners that they will be finalizing a sale – tenant begins a search for a new rental unit.

June 10, 2010 – tenant is advised the property is sold

June 11, 2010 – landlord receives confirmation of sale and advised by purchasers to issue tenant a 2 Month Notice to End for Landlord's Use – property is sold.

June 13, 2010 – tenant secures a new rental unit and advised the landlord they will be vacating –“ no date given” (landlord), “By month's end” (tenant).

June 29, 2010 – tenant vacates rental unit.

June 30, 2010 – landlord and tenant meet at rental unit. Tenant has already vacated. Landlord is surprised of the move, but gives tenant an incomplete Notice to End – intended by the landlord to be a 2 Month Notice to End by August 31, 2010. The notice to end is an old form, is not signed or dated, and is missing the relevant page (3) which would formulate the 2 Month Notice portion. However, the notice states, “Sale of Property – see letter attached. The landlord claims the Notice was given to her by the realtor, as is. The landlord testified that she did not complete the form as the tenant had already vacated.

The tenant claims that the landlord should be obligated to compensate her one the equivalent to one month's rent because the tenant vacated the rental unit to accommodate the landlord's sale of the property. The landlord argues that the tenant elected to vacate before she (landlord) even knew that the sale was finalized, and before she was able to give the tenant any required Notice to End due to the sale.

When the tenant vacated, the landlord returned the security deposit as agreed by the parties, but did not include an amount for interest on the security deposit.

## Analysis

The tenant claims compensation under Section 51 of the Act which provides as follows:

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.

51(2) In addition to the amount payable under subsection (1), if

51(2)(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

51(2)(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.

Sections 49(3) and 49(7) of the Act provide as follows:

49(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

49(7) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

Section 52 of the Act provides as follows:

In order to be effective, a notice to end a tenancy must be in writing and must

52(a) be signed and dated by the landlord or tenant giving the notice,

52(b) give the address of the rental unit,

52(c) state the effective date of the notice,

52(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and

52(e) when given by a landlord, be in the approved form.

The *tenant's right* to compensation under Section 51 is not triggered unless the landlord gives a notice under section 49, which must be on the approved form pursuant to section 52. The landlord testified that the only "notice" given to the tenant would have been some sort of as verbal notice. The tenant vacated before the landlord would give the tenant a notice in the approved form, or reasonable valid Notice to End, and I find that the landlord's incomplete Notice to End was not effective to end the tenancy and the tenant's right to compensation was not triggered. Although the tenant chose to vacate the rental unit as soon as they learned of the pending sale, it does not give him the tenant a *right* to compensation. As a result of all the above the tenant's claim for compensation under Section 51 of the Act **is dismissed**.

I find the tenant is entitled to interest on her security deposit in the amount of **\$22.99** for the applicable period of the tenancy. As the tenant has been partially successful in their application, I grant the tenant recovery of their filing fee in the amount of **\$50** for an award in the aggregate of **\$72.99**

### **Conclusion**

**I grant** the tenant an order under Section 67 of the Act for the amount due of **\$72.99**. If necessary, this order may be filed in the Small Claims Court and 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*.

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