



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, MNSD, FF

### Introduction

This hearing dealt with an Application by the Tenants for an order to cancel a one month Notice to End Tenancy issued for alleged cause, for monetary orders for money owed or compensation under the Act or Tenancy Agreement, for return of the security deposit and pet damage deposit paid to the Landlord and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

### Preliminary Matters

The Tenants originally filed their Application on September 17, 2012, to dispute a one month Notice to End Tenancy dated September 10, 2012. Prior to the hearing, on or about September 26, 2012, the Tenants vacated the rental unit. Therefore, the issue of cancelling the Notice to End Tenancy was not addressed during the hearing, and that portion of the Tenant's claim is dismissed.

On October 4, 2012, the Tenants amended their Application to request the monetary relief sought. They served the Landlord with the Amended Application by registered mail, sent on October 5, 2012. The Landlord did not pick up the mail until October 15, 2012, and therefore claims they could not reply with their evidence on time. The Landlord submitted evidence on October 16, 2012. Evidence to the branch must be submitted five clear business days prior to the hearing.

Under section 90 of the Act, mail is deemed served five days after mailing. Canada Post tracking information provided during the hearing indicates there was an attempted

delivery on October 6, 2012; however, the Landlord did not sign for the mail until October 15, 2012.

Based on section 90, I find the Landlord was deemed served on October 10, 2012, with the Amended Application. This leads me to find the Landlord's documentary evidence submitted on October 16, 2012, was not reply evidence and was therefore late, and I find this evidence is not admissible. Nevertheless, it was explained to the Agent for the Landlord that she was allowed to orally provide this evidence during the hearing.

#### Issue(s) to be Decided

Are the Tenants entitled to monetary relief from the Landlord?

Has there been a breach of Section 38 of the Act by the Landlord?

#### Background and Evidence

This tenancy began on March 15, 2011, with the parties entering into a written tenancy agreement. The monthly rent was \$800.00. The parties disagree on the amount that was paid for security and pet damage deposits.

The Tenants claim they paid the Landlord \$1,000.00 for these deposits. The appearing Tenant testified that she had a cancelled cheque for this sum, but did not supply it in evidence. The Tenant testified that to the best of her knowledge, she did not know what the \$1,000.00 payment was entirely composed of. She testified that the Tenants did move in early and maybe a portion of this amount could have been for extra rent.

The Agent for the Landlord testified that the tenancy agreement shows a \$400.00 security deposit and a pet damage deposit for \$200.00. The Agent testified that the Tenants had more than one pet in the rental unit and therefore, an additional \$200.00 pet damage deposit was requested. The Agent testified that she had reviewed the account history for the tenancy and had never received a payment of \$1,000.00 by cheque from the Tenants.

The Tenants are requesting monetary compensation of \$1,814.41 for lost wages, \$231.35 for an airline ticket, \$324.00 for a portion of lost rent for September 2012, \$860.00 in moving costs, and to recover the \$50.00 filing fee for the Application.

The appearing Tenant testified that on September 19, 2012, she noticed a leak coming down from the ceiling in the rental unit. There are unrelated renters who reside in a unit

above the subject rental unit. The Tenant and the Agent for the Landlord exchanged a series of text messages, copies of which were included in the Tenants' evidence.

It was determined the washing machine in the unit above was the cause of the leak. The Agent and the appearing Tenant exchanged several messages regarding the water being turned off to the unit above. The Tenant testified that she was afraid the Agent was going to enter the rental unit to turn the water back on to the rental unit above. There are text messages from the Agent to the Tenant informing her she should turn the water back on as she did not have permission to turn it off. The Agent also writes, "Im coming into turn it on its an emergency and are you packed yet?" [Reproduced as written.]

The Tenant testified she was afraid of the Agent and called the police. According to the Tenant the police would not attend as they said the Agent had only threatened to attend the rental unit.

The Tenant testified she had her father attend the rental unit on September 19, 2012, and apparently the Tenant's father had a discussion with the upstairs renters on that date. The water was turned back on to the unit above on September 19, 2012.

The Tenant alleged that the Landlord had previously informed her she was going to use some "muscle" to remove unwanted renters in another unit in the building. The Tenant testified that for this reason, and the Tenant's belief the Landlord was going to enter the rental unit to turn on the water on September 19, 2012, the Tenants decided on September 26, 2012, to end the tenancy and move out.

The male Tenant flew back from his job in another province. The Tenants claim \$1,814.41 for his lost wages, and \$231.35 for his airline ticket to return to the rental unit.

The Tenants vacated the rental unit on September 26 and informed the Landlord of this by fax, email and registered mail on September 26, 2012. The Tenants provided the Landlord with their forwarding address to return the security deposit to in these communications. The Tenants claim for \$324.00 for loss of rent for September and \$860.00 in moving costs.

The Tenants did not supply any copies of receipts, or wage information, in support of their claims.

The Tenant testified that the Landlord did not perform incoming or outgoing condition inspection reports.

In reply to the Tenants' claims, the Agent for the Landlord testified that there were ongoing disputes about noise between the Tenants and the renters in the unit above the subject rental unit. The Agent testified that the renters in the upper unit were usually up early in the morning around 6:30 or 7 a.m. and this woke up the Tenants below. The Agent explained that the Tenants had retaliated against the upstairs renters by using a broom to pound on the floor above. The Agent explained there was a lot of hostility between the Tenants and the renters in the unit above, with the parties yelling at each other. The Agent testified that the situation appeared to be growing worse between them and that is why she issued the one month Notice to End Tenancy on September 10, 2012, prior to the leaking washing machine incident.

The Agent for the Landlord also testified that following the incident involving the leaky wash machine, she had not heard anything else from the Tenants until they notified her that they had vacated the rental unit on September 26, 2012. The Agent also questioned why the Tenant would call the police over a leak in the rental unit.

The Agent explained that the allegation of bringing "muscle" to the rental unit was actually about her brother. The Agent testified that she and her brother attended at a different rental unit to evict occupants who did not have a tenancy agreement with the Landlord, who were squatting in the unit. The Agent testified she was fearful of these occupants and their potential retaliation so she had her brother attend. The Agent warned the Tenant that she and her children might not want to be at the property during this time, as she was not sure how the occupants would react.

The Agent also questioned the Tenants claims as they had not provided any receipts.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;

3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage or loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did everything possible to minimize the damage or losses that were incurred.

Furthermore, where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this instance, I find the Tenants did not have sufficient evidence to prove the Landlord had threatened them, or had breached the *Act* or tenancy agreement, sufficiently to justify them vacating the rental unit without providing the required notice to end tenancy to the Landlord.

I do not accept that the Tenants were so threatened they had to leave the rental unit for fear of their safety. In fact, the Tenants have no evidence they were ever threatened by the Landlord, beyond a text message warning about entering the rental unit to turn on water which the Tenants had turned off themselves. Furthermore, I do not accept that if the Tenants felt so threatened on September 19 (when the leak occurred), they had to leave the rental unit, that they would wait another seven days to vacate the rental unit.

For these reasons, I find the Tenants have failed to prove the Landlord violated the *Act* or tenancy agreement, and therefore, I deny their monetary claims for moving, travel, loss of work, or loss of rent.

I find the Tenants abandoned the rental unit on September 26, 2012, without giving the required notice to end tenancy to the Landlord. Even if the Tenants had given the required one month Notice to End tenancy on the 26<sup>th</sup> of September, the earliest the tenancy might have ended in accordance with the *Act* was October 31, 2012. Furthermore, October 31, 2012, is the date the tenancy would have ended under the one month Notice to End Tenancy. Therefore, I find the Tenants' request for return of the security deposit was premature, and I dismiss that claim, with leave to reapply. I note the Landlord has filed an Application to keep the security deposit and that matter is scheduled to be heard in the future.

Conclusion

The Tenants have failed to prove the Landlord breached the Act or tenancy agreement and their monetary claims for moving, lost wages, flights, or loss of rent are dismissed without leave to reapply. The Tenants filed prematurely against the security deposit and that claim is dismissed with leave to reapply. There is a hearing in the future to deal with the Landlord's request to keep the security deposit.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: October 24, 2012.

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Residential Tenancy Branch