



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNSD, MNDC, FF; CNC, OLC, PSF, LRE

### Introduction

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

- an order of possession for cause pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

This hearing dealt with the tenants' application pursuant to the Act for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

The tenants did not attend this hearing, although I waited until 1119 in order to enable the tenants to connect with this teleconference hearing scheduled for 1100. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he served the tenants with the dispute resolution package on 15 March 2016 by registered mail. The landlord provided me with Canada Post

customer receipts that showed the same. On the basis of this evidence, I am satisfied that the tenants deemed were served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

The landlord testified that he personally served the tenants with the amended dispute resolution package on 5 April 2016. The landlord provided me with a witnessed proof of service statement. On the basis of this evidence, I am satisfied that the tenants were served with the dispute resolution package pursuant to section 89 of the Act.

#### Preliminary Issue – Moot Issues

In accordance with section 44 of the Act, a tenancy ends where:

- the landlord or tenant gives notice,
- the landlord and tenant agree in writing; or
- the tenant abandons the rental unit.

Both the landlord and tenants sought remedies in respect of the landlord's 1 Month Notice. At the hearing, the landlord informed me that the tenants vacated the rental unit on or about 22 April 2016. On 23 April 2016, the tenants sent a text message to the landlord indicating that the tenants had removed all of their belongings from the rental unit and would return to clean the rental unit if the landlord withdrew his application.

On the basis of the landlord's uncontested testimony, I find that the tenant abandoned the rental unit on 22 April 2016 when they removed their possessions and ceased occupation. I find that possession of the rental unit transferred back to the landlord on this date.

As the tenant abandoned the rental unit on 22 April 2016, I find that the following issues are moot:

- the landlord's application for an order of possession for cause; and
- the tenants' application to cancel the landlord's 1 Month Notice.

As possession has returned to the landlord, I decline to issue an order of possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Are the tenants entitled to order requiring the landlord to comply with the Act, regulation or tenancy agreement? Are the tenants entitled to an order to the landlord to provide services or facilities required by law? Are the tenants entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began 14 November 2015 and ended 22 April 2016. The parties entered into a written tenancy agreement on 26 October 2015. Monthly rent in the amount of \$950.00 was due on the first. The landlord continues to hold the tenants' security and pet damage deposits (the deposits) totaling \$680.00, which were collected at the beginning of this tenancy.

On 29 February 2016, the landlord personally served the tenants with the 1 Month Notice. The 1 Month Notice was dated 29 February 2016 and set out an effective date of 31 March 2016. The 1 Month Notice set out that it was given as the tenant or person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. The landlord testified that the notice was given to the tenants as they would continually cause loud disturbances late at night and into the early morning.

On 10 March 2016, the tenants made an application to the Residential Tenancy Branch to cancel the 1 Month Notice.

The landlord testified that the tenants did not pay any amount for their use and occupancy of the rental unit in April.

### Analysis

#### *Landlord's Application*

Pursuant to subsection 57(2) of the Act, a landlord must not take actual possession of a rental unit that is occupied by a tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules. The first step in obtaining a writ of possession is obtaining an order of possession. The landlord initiated this first step when he filed his application. The tenants abandoned the rental unit prior to the hearing on the merits of their application to cancel the 1 Month Notice.

Pursuant to subsection 57(3) a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended. Further, pursuant to section 67 a landlord is entitled to be compensated for his or her rental loss. A claim for loss is subject to a duty of mitigation pursuant to section 7(2).

The tenants continued to use and occupy the rental unit until 22 April 2016. The landlord put the tenants on notice that he would be claiming for a rental loss for April. This loss is reasonable given the timing of this hearing and the ability to secure new tenants. On the basis that the tenants continued to use the rental unit for the period 1 to 22 April 2016 and caused the landlord a rental loss by preventing the landlord from renting the unit for the remainder of April, I find that the landlord has proven his entitlement to the full amount of the claimed rent loss amount: \$950.00.

The landlord applied to keep the tenants' deposits. I allow the landlord to retain the deposits in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord has been successful in this application, he is entitled to recover his filing fee from the tenants.

### *Tenants' Application*

The tenants have the onus of proving their entitlement to the following remedies:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

The tenants did not attend the teleconference hearing to provide evidence or submissions in support of their application.

Rules 7.1 and 7.3 of the Rules of Procedure establish the consequences of failing to appear at a hearing at the scheduled time:

#### **7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

#### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any evidence or submissions from the tenants and in the absence of the tenants' participation in this hearing, I order the tenants' application dismissed without leave to reapply.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$370.00 under the following terms:

<b>Item</b>	<b>Amount</b>
April Rent Loss	\$950.00
Offset Security Deposit Amount	-680.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$370.00</b>

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The tenants' 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 subsection 9.1(1) of the Act.

Dated: April 25, 2016

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Residential Tenancy Branch