



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, OLC MNDC, MNSD, FF

### Introduction

This hearing addressed the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") to:

- cancel a 2 Month Notice to End Tenancy for Landlord Use ("2 Month Notice"), pursuant to section 49;
- order the landlord to comply with the *Act*, regulations or tenancy agreement, pursuant to section 62;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- a monetary order for return of security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Tenant CF, tenant JF, landlord AT and landlord NAT attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlords' confirmed receipt of the tenants' application ("Application") for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the application.

### Preliminary Matters

At the outset of the hearing the tenants testified that they had vacated the rental unit on June 1, 2016 but still disputed the manner in which the tenancy was ended. Tenant CF confirmed the landlord did not issue a 2 Month Notice or any written notice to end the tenancy. As the tenants have vacated the rental unit and confirmed the landlord did not issue a 2 Month Notice, I find I am not obligated to make a finding in regards to the 2 Month Notice and dismiss this portion of the tenants' claim without leave to reapply. As the tenancy is ended and as a landlord's compliance may only be sought in relation to an ongoing tenancy I dismiss this claim as well.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to a monetary order for return of security deposit?

Is the tenant authorized to recover the filing fee for this application?

Background and Evidence

The landlord occupied the upstairs and the tenants occupied the downstairs level of a home. The parties did not provide a copy of a tenancy agreement and provided conflicting testimony on the tenancy details. Landlord AT testified that the tenancy began March 1, 2012 on a fixed term that expired February 28, 2013 at which time it continued on a month to month basis. In contrast, tenant CF testified that the tenancy began February 1, 2012 on a one year fixed term that was renewed each year by way of posted dated cheques. Landlord NAT testified that at the start of the tenancy, the tenants remitted a \$475.00 cheque and were reimbursed \$12.50 in cash. Landlord NAT claims in total the tenants paid \$462.50 for the security deposit. The tenants testified that at the start of their tenancy, they remitted a \$475.00 cheque and did not receive any cash back from the landlords. The tenants submitted a copy of their February 2012 bank statement that indicates a cheque in the amount of \$475.00 was cashed on February 2, 2012. The parties agreed that rent in the amount of \$925.00 was payable on the first of each month and that a condition inspection was not completed at the start or end of tenancy.

The parties provided conflicting testimony on the particulars of how the tenancy ended, however all parties agreed the rental unit was sold, no notice to end tenancy was issued and the tenants vacated the rental unit on June 1, 2016.

The tenants seek a monetary order of \$1,925.00. The tenants seek moving expenses in the amount of \$425.00 and have submitted a receipt from the moving company to substantiate this amount. The tenants seek one month's rent in the amount of \$925.00 due to their understanding that a broken lease entitles them to a month's free rent. The tenants seek the return of the security deposit in the amount of \$475.00. Tenant JF acknowledged that on May 30, 2016 he signed a letter that stipulates his failure to return 2 sets of house keys, digital PVR box and remote upon vacancy of the rental unit would result in deductions from the security deposit.

Tenant CF testified that the landlord was made aware of the tenants new forwarding address via the moving receipt provided to the landlord on May 15, 2016 as part of her evidence package. Further tenant CF testified that she forwarded her new forwarding address via text to the landlord on June 11, 2016. The tenants seek the filing fee in the amount of 100.00.

The landlords' do not feel obligated to cover the moving costs, as it is their position that despite the sale of the rental unit, the tenants provided notice to them and the tenants vacated the premises on their own accord. The landlords disagreed they owed one month's rent, there was no written tenancy agreement for the last year and it was on a month to month basis. The landlords testified that despite a signed agreement by the tenants to return the keys, digital PVR box and remote control to the landlord upon vacancy, the tenants have not returned these items. Consequently, the landlords have retained the security deposit. The landlords have provided a copy of the signed letter. Further, the tenant did not provide her new forwarding address until June 11, 2016 via text.

### Analysis

Under section 44 of the *Act*, a tenancy ends when the tenant vacates the rental unit. Because the tenants vacated the rental unit on their own accord, they are not entitled to seek compensation in the form of moving costs from the landlords. Consequently, I find the tenants are not entitled to the \$425.00 portion of their claim.

The *Act* defines a fixed term tenancy as a tenancy under a tenancy agreement that specifies the date on which the tenancy ends. I find the issuance of post-dated cheques does not satisfy the *Acts* definition of a fixed term tenancy. In the absence of a written signed tenancy agreement, I find the tenancy was month to month. Regardless of this finding, it should be noted that a fixed term tenancy that is ended by a landlord that is not in accordance with the *Act*, does not entitle a tenant to compensation in the amount of one month's rent. Based on the above, I find the tenants are not entitled to the \$925.00 portion of their claim.

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit. In the absence of a landlord filing an application the tenant must prove a forwarding address in writing was provided to the landlord. The submission of a moving receipt with a partially written address submitted as part of an evidence package does not meet the requirement of a separate written notice. In accordance with landlord JF's

testimony in which he acknowledged receipt of the forwarding address on June 11, 2016, I find the landlord was notified of the tenants forwarding address on this same date. Accordingly I find the tenants' application for the return of the deposit premature and dismiss this portion of the tenants claim with leave to reapply. The landlord has fifteen days from the date of this decision to return the deposit or file an application to retain it.

As the tenants were not successful in this Application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for the Application.

### Conclusion

The tenants' application to cancel a 2 Month Notice is dismissed without leave to reapply.

The tenants' application to order the landlord to comply with the *Act*, regulations or tenancy agreement is dismissed without leave to reapply.

The tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is dismissed without leave to reapply.

The tenants' application for a monetary order for return of security deposit is dismissed with leave to reapply.

The tenants' application to recover the filing fee for this 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: June 24, 2016

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Residential Tenancy Branch