



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, AAT, ERP, MNDC, MNSD, O, PSF, RP, FF

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to allow access to or from the rental unit or site for the tenants or the tenants' guests pursuant to section 70;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenants stated that the notice of hearing package and the submitted documentary evidence were served to the landlords via Canada Post Express Post on May 18, 2017. The landlords confirmed receipt of the notice of hearing package via regular post and that there was no documentary evidence included. The landlords submitted no documentary evidence. The tenants were adamant that the package was complete and served in this manner. The tenants submitted a copy of a receipt from Canada Post

dated May 18, 2017. A review of this receipt shows a purchase of 2 items at \$0.10 each for total of \$0.20. I find that this receipt fails to support the tenants' claim that the notice of hearing package and the submitted documentary evidence was served via Canada Post Express Post.

I find that as both parties have attended and have confirmed receipt of the notice of hearing package that both parties have been properly served. As for the documentary evidence, I find that the tenants have failed to properly serve the landlords with the documentary evidence and order that this material be excluded from consideration in this decision.

#### Preliminary Issue(s)

At the outset the tenants' application was contradictory and required clarification. The tenants clarified that the following selections on their application were made in error and that the tenants no longer reside at the rental premises. As such, the following portions of the tenants' application were cancelled at the request of the tenants.

CNC- Request to Cancel a 1 Month Notice to End Tenancy for Cause

AAT- Request the landlord to allow access to the rental premises

ERP-Request the landlord to make emergency repairs

RP- Request the landlord to make repairs to the rental premises

O- Request the landlord comply with the Act, Regulation or tenancy agreement

PSF- Request the landlord to provide services or facilities agreed upon but not provided

Both parties confirmed their understanding and that the hearing shall proceed on the monetary claims (MNDC and MNSD) only.

#### Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation, return of the security and pet damage deposits and recovery of the filing fee?

#### Background and Evidence

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

Both parties agreed that this tenancy began on October 29, 2016 on a 1 year fixed term tenancy ending on October 31, 2017. Both parties agreed that the monthly rent was set at \$1,350.00 payable on the 1<sup>st</sup> day of each month. Both parties agreed that a \$675.00 security and a \$675.00 pet damage deposits were paid.

The tenants seek a monetary claim of \$2,582.30 which consists of:

\$1,132.30	Return of May 2017 rent, prorated minus 5 days
\$675.00	Return of Security Deposit
\$675.00	Return of Pet Damage Deposit

The tenants claim that the flood occurred on May 5, 2017 requiring them to temporarily vacate the rental premises. The tenants claim that the landlords persist to have the tenants move back in although the rental premises are not up to health and safety requirements. The tenants provided affirmed testimony that a verbal agreement was made with the landlords to mutually end the tenancy.

The tenants seek recovery of the pro-rated rent for May 2017 minus the first 5 days of May and the return of the security and pet damage deposits.

The landlords dispute the tenants' claim that the rental premises were not up to health and safety requirements. The landlords also claim that no verbal agreement was made with the landlords to mutually end the tenancy.

The tenants also claim that notice to vacate the rental premises were not given to the landlord nor was their forwarding address in writing provided to the landlord for the return of the security and pet damage deposits.

### Analysis

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case, the tenants have claimed that a verbal agreement was made to mutually end the tenancy. The landlords have disputed that no such agreement was made. As such, I find that the tenants have failed to provide sufficient evidence to support their claim.

On the tenants' claim for return of \$1,132.30 of the May 2017 rent, I find that the tenants have failed. The tenants by their own direct testimony stated that no notice to end the tenancy was made to the landlord. This portion of the monetary claim is dismissed.

Section 38 of the Act requires the landlord to either return all of a tenant's security/and or pet damage deposit(s) or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receipt of the tenant's forwarding address in writing.

As the tenants have confirmed that a forwarding address in writing requesting the return of the security and pet damage deposits has not been provided to the landlord, I find that the tenants application is premature in these circumstances and dismiss this portion of the tenant's application with leave to reapply.

### Conclusion

The tenants' monetary claim is dismissed.

The tenants' request for return of the security and pet damage deposits are dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

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 28, 2017

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Residential Tenancy Branch