



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord:    OPL OPB MNR FF  
Tenant:            MNDC OLC RR CNL FF O

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlords’ Application was received at the Residential Tenancy Branch on July 12, 2017 (the “Landlords’ Application”). The Landlords applied for the following relief pursuant to the *Act*:

- an order of possession based on the Tenant’s breach of an agreement;
- an order of possession based on a Two Month Notice to End Tenancy for Landlord’s Use of Property, dated July 6, 2017 (the “Two Month Notice”);
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Tenant’s Application is dated June 19, 2017, and was amended on July 7, August 4, and August 8, 2017 (the “Tenant’s Application”). The Tenant applied for the following relief pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlords comply with the *Act*, regulations, or a tenancy agreement;
- an order reducing rent for repairs services or facilities agreed upon but not provided;
- an order cancelling the Two Month Notice;
- an order granting recovery of the filing fee;
- other unspecified relief.

The Tenant initially submitted claims with the following dispute codes: DRI, ERP, PSF, and RP. However, these were withdrawn by the Amendment to An Application for

Dispute Resolution, received at the Residential Tenancy Branch on August 4, 2017. Accordingly, these have not been considered further in this Decision.

The Landlords were both in attendance at the hearing. However, the Landlords' testimony was provided by X.Z. only. The Tenant was also in attendance at the hearing. She was assisted by S.B., a summer law student, who made submissions on her behalf. All parties giving testimony provided a solemn affirmation.

On behalf of both Landlords, X.Z. testified the Landlords' Application package was served on the Tenant by registered mail on July 12, 2017. S.B. acknowledged receipt on the Tenant's behalf. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find the Tenant is deemed to have received the Landlords' Application package on July 17, 2017.

The Landlords submitted further documentary evidence, which was received at the Residential Tenancy Branch on August 15, 2017, three days before the hearing. As it was not received in accordance with the Rules of Procedure, I have not considered this evidence further in this Decision. In addition, the evidence appears to relate to a claim related to use of utilities. In light of my decision to sever several aspects of the parties' claims, below, I find there is no prejudice to the Landlords in doing so.

On behalf of the Tenant, S.B. stated the Tenant's Application package was served on the Landlord by registered mail on June 19, 2017. A Canada Post registered mail receipt was provided in support. In addition, an Amendment to an Application for Dispute Resolution, received at the Residential Tenancy Branch on July 7, 2017, was served on the Tenant by registered mail on that date. Again, a Canada Post registered mail receipt was provided in support. Finally, S.B. confirmed that a documentary evidence package upon which the Tenant wished to rely, received at the Residential Tenancy Branch on August 4, 2017, was served on the Landlords in person on August 4, 2017. Although other evidence and amendments were served on the Landlords and submitted to the Residential Tenancy Branch, these related to matters that have been severed pursuant to Rule of Procedure 2.3, below. Accordingly, service and receipt of these documents have not been considered further in this Decision.

Neither party raised any issues with respect to service or receipt of the above documents. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of

Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The parties were advised that Rule 2.3 of the Residential Tenancy Branch Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. In these circumstances, I find it appropriate to exercise my discretion to sever the all but the Landlords' Application to end the tenancy based on a breach of an agreement and the Two Month Notice, and to recover the filing fee. In addition, I find it appropriate to exercise my discretion to sever all but the Tenant's Application to cancel the Two Month Notice and to recovery the filing fee. The parties are granted leave to reapply for the remainder of the relief sought at a later date, as appropriate.

### Issues to be Decided

- Are the Landlords entitled to an order of possession based on the Tenant's breach of an agreement?
- Are the Landlords entitled to an order of possession based on the Two Month Notice?
- Are the Landlords entitled to recover the filing fee?
- Is the Tenant entitled to an order cancelling the Two Month Notice?
- Is the Tenant entitled to recover the filing fee?

### Background and Evidence

The Landlords submitted a copy of the tenancy agreement between the parties into evidence. It confirmed a fixed-term tenancy for the period from July 1, 2017 to June 30, 2018. Rent in the amount of \$2,200.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$1,100.00, which the Landlords hold.

On behalf of both Landlords, X.Z. testified that the Landlords decided to sell their home in early May 2017. However, to assist the Tenant, the parties agreed to enter into a new fixed-term tenancy agreement, described above. However, when rent under the new agreement became due on July 1, 2017, the Tenant paid the lower rent due under the previous agreement in error. That is, the Tenant paid \$970.00 rather than \$1,020.00. The Landlords saw this as a breach of the fixed-term tenancy agreement but did not issue a notice to end tenancy for unpaid rent or utilities.

The Landlords believed that the fixed-term tenancy reverted to a month-to-month tenancy as a result of the perceived breach. Accordingly, the Landlords issued the Two Month Notice, which was received by the Tenant on July 6, 2017. In response, the Tenant filed an Amendment to an Application for Dispute Resolution to dispute the Two Month Notice, which was received at the Residential Tenancy Branch on July 7, 2017, the next day.

In reply, S.B. submitted that the Tenant is a party to a fixed-term tenancy agreement that ends on June 30, 2018, and that the Landlords were not entitled to issue the Two Month Notice. In addition, S.B. confirmed the Tenant paid rent in full on July 17, 2017, after consultation with the Residential Tenancy Branch.

### Analysis

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

Section 49(2) of the *Act* prevents landlords from ending a tenancy for landlord's use of property before the end of a fixed term. It states:

*Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be*

- (a) not earlier than 2 months after the date the tenant receives the notice,*
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and*
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.*

[Reproduced as written.]

I find that the parties entered into a fixed-term tenancy agreement for the period from July 1, 2017 to June 30, 2018. Pursuant to section 49(2)(c) of the *Act*, the Landlords

were not entitled to issue the Two Month Notice. This aspect of the Landlords' Application is dismissed.

The Landlords also sought an order of possession on the basis the Tenant breached the tenancy agreement by paying only \$970.00 when \$1,020.00 was due. However, it was not disputed that the Tenant subsequently paid rent in full, and that the Landlords did not issue a notice to end tenancy for unpaid rent or utilities, pursuant to section 46 of the *Act*. Accordingly, this aspect of the Landlords' Application is dismissed.

In light of the above, I find the Tenant's Application to cancel the Two Month Notice is successful. The tenancy will continue until otherwise ended in accordance with the *Act*. Having been successful, I find the Tenant is entitled to recover the filing fee paid to make the Application, which I order may be deducted from a future rent payment at the Tenant's discretion.

### Conclusion

The Landlords' Application is dismissed. The tenancy will continue until otherwise ended in accordance with the *Act*. I order that the Tenant may deduce \$100.00 from a future rent payment, at the Tenant's discretion, in recovery of the filing fee paid to make the Tenant's Application.

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: August 21, 2017

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Residential Tenancy Branch