



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC FF MNDC MNSD OLC OPC

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt with applications from both parties:

The landlord applied for:

- an Order of Possession pursuant to section 47 of the *Act* for Cause; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenants applied for:

- cancellation of the landlord's notice to end tenancy pursuant to section 55;
- a return of the filing fee pursuant to section 72 of the *Act*;
- an Order for the landlord to comply with the *Act* pursuant to section 62;
- a monetary order for money owed or compensation under section 67 of the *Act*;
- and
- a return of the security deposit pursuant to section 38 of the *Act*.

Both the landlord and the tenants appeared at the hearing. The landlord was assisted at the hearing by T.G., as the landlord explained that she had suffered an accident and had difficulty moving the pages in her file. Both the landlord and the tenants were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Both parties confirmed receipt of each other's applications for dispute resolution by way of Canada Post Registered Mail. The receipts for the Registered Mail documents were submitted to the hearing as part of the parties' evidentiary packages.

The landlord confirmed that a 1 Month Notice to End Tenancy for Cause was served on the tenants in person on July 25, 2017. Pursuant to section 88 of the *Act*, the tenants are found to have been served with the 1 Month Notice on the same day of service.

Following introductory remarks, the tenants explained that they had already moved out of the premises and that the security deposit had been returned to them. They said they were no longer pursuing a cancellation of the landlord's notice to end tenancy or for a return of the security deposit. The landlord explained that she was no longer seeking an Order of Possession as the tenants were no long in possession of the unit. Pursuant to section 64(3)(c) of the *Act*, I amend the parties application to reflect only the tenants' application for a monetary award related to money owed or compensation for damage or loss under the *Act*.

#### Issue(s) to be Decided

Are the tenants entitled to a monetary award for loss under the *Act*?

Is either party entitled to a return of the filing fee?

#### Background and Evidence

Testimony presented at the hearing by the tenants established that this tenancy began on August 1, 2014 and ended on August 31, 2017. Rent was \$1,600.00 and a security deposit of \$800.00 collected at the outset of the tenancy was returned to the tenants following the conclusion of their tenancy.

The tenants said that on July 25, 2017 they were served with a Notice to End Tenancy for Cause. They tenants continued by explaining that they were not evicted by an Order of an arbitrator with the *Residential Tenancy Branch* but rather left the premises under their own volition. The tenants stated that they had a family of 7 people and could not risk losing in arbitration and facing a 2 Day Notice to End Tenancy. They therefore had to make accommodations to ensure that they had stable housing.

The tenants are seeking a monetary order of \$11,800.00 from the landlord. This amount reflects the difference in the cost of living that they have incurred, including increased rent, utilities, taxes and the associated moving costs. On September 1, 2017 the tenants began a new tenancy with a different landlord. This new landlord insisted that they sign a 1 year lease at a rate of \$2,200.00 per month. The tenants argued that this figure represents a significant increase in their rent from their previous landlord. The tenants

alleged that they were evicted without cause and are looking to recover the associated differences in their living costs.

The landlord questioned why she would be responsible for the costs associated with the tenants living arrangements for an entire year and questioned how the tenants arrived at the figure submitted at the hearing for their associated moving costs.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove their entitlement to a claim for a monetary award.

The tenants explained that they sought a monetary award of \$11,800.00 for the difference in cost of living and associated moving expenses they have experienced after signing a new lease moving into a new property. The tenants said that they only entered into this new tenancy because they were improperly served with a Notice to End Tenancy from their previous landlord.

While the tenants' position is understandable, I do not find that they are entitled to a monetary award under the *Act*. In order for a party to receive compensation under section 67 of the *Act*, it must be proved that *the existence of the damage/loss...stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party*. The tenants by their own admission vacated the property prior to any decision being rendered by an arbitrator with the *Residential Tenancy Branch* concerning the validity of the Notice to End Tenancy served on them by the landlord. In moving out under their own accord and without a decision concerning the legitimacy of the Notice to End Tenancy, the tenants have relinquished their entitlement to a monetary award, as no decision was ever reached concerning whether or not a violation of their tenancy agreement or the *Residential Tenancy Act* occurred.

For these reasons, I dismiss the tenants' application for a monetary award.

As both parties were unsuccessful in their applications, they must each bear the cost of the filing fee.

Conclusion

The tenants' application to for a monetary award is dismissed.

Both parties must bear the cost of their own filing fees.

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: October 2, 2017

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Residential Tenancy Branch