



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FF MNDC OLC

### Introduction

This hearing was convened in response to applications by the tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a monetary award for loss under the tenancy agreement pursuant to section 67 of the *Act*;
- an Order directing the landlord to comply with section 62 of the *Act*; and
- a return of the filing fee.

Both the tenants and the landlord appeared at the hearing. The tenants were represented at the hearing by tenant B.C. Both parties were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The landlord confirmed receipt of the tenants’ application for dispute resolution by way of Canada Post Registered Mail on June 2, 2017. Pursuant to section 89 of the *Act* the landlord is found to have been duly served with the tenants’ application.

At the hearing the tenants explained that they sent a copy of their evidentiary package to both the *Residential Tenancy Branch* and the landlord. No evidentiary package was received by the tenants, and none was received by the *Residential Tenancy Branch*. The landlord stated that she sent a copy of her evidentiary package to only the *Residential Tenancy Branch*.

Under rule 3.15 of the *Residential Tenancy Rules of Procedure*, I decline to accept this evidence. This Rule states, “The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent’s evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.” I find that the applicants would be unfairly prejudiced if I were to allow the respondent landlord’s evidentiary package and therefore decline to consider it.

Issue(s) to be Decided

Should the landlord be directed to comply with the *Act*?

Are the tenants entitled to a monetary award?

Can the tenants recover the filing fee associated with the application?

Background and Evidence

Both parties agreed on all facts related to the oral testimony presented at the hearing by the tenants.

The parties explained that this tenancy was to begin on April 1, 2017. Rent was set at \$2,300.00 and a security deposit of \$1,150.00 which was collected, was returned to the tenants. The parties stated that a few days prior to taking possession of the rental home, due to an unexpected change in personal circumstances, the landlord could no longer offer the tenants use of the rental property. The tenants said that because of this loss, they were forced to find alternative accommodation and as a result suffered a loss. Additionally, the parties agreed that the landlord had originally offered the tenants 1 month's compensation for their loss; however, after some consideration on the part of the landlord, this offer was later changed to ½ a month's rent.

The tenants stated that they are seeking a Monetary Order of \$3,820.00 related to the promise of a return of 1 month's rent for their troubles, along with a return of the expenses that they incurred due to the unexpected, last minute move. Specifically, the tenants are seeking \$2,300.00 which had been promised to them by the landlord if they agreed to forgo taking possession of the premises, and \$1,200.00 related to rent which was paid for a pad rental of a manufactured home, along with \$320.00 in storage expenses that were incurred. At the hearing the landlord did not question that the tenants' expenses, but wondered why the tenants did not store items with family members during this period of transition.

Analysis

All parties attending agreed that the tenants were disrupted due to a last minute change in circumstances regarding the housing situation and as a result suffered a loss related the expenses they incurred on a pad rental and storage.

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 monetary award.

I find that it is indisputable that the tenants suffered a loss that can be directly attributable to a last-minute cancellation of their tenancy agreement with the landlord. While no physical evidence was received by either the landlord or the *Residential Tenancy Branch* demonstrating the loss that the tenants suffered resulting from the pad rental and the storage of items, I found tenant B.C. to be a credible witness and accept the figures cited by her which are related to her loss.

The tenants applied for a monetary award for actual financial loss (pad rental and storage) and for a promise by the landlord to the tenants equivalent to one-month's rent for the inconvenience they experienced as a result of the last minute change in their living circumstances. The question is therefore whether the tenants can rely on this promise to seek compensation.

In order for the tenants to do so, the basics of contract law must be considered. A contract contains three elements; offer, acceptance and consideration. There is no dispute that an offer equivalent to 1 month's rent was made by the landlord to the tenants, while the tenants said that they relied on this promise in exchange for agreeing to forfeit their right to the rental unit. This action of moving by the tenants is consideration, as they gave up their home in satisfaction for receiving the one-month's rent. I find that a contract between the parties was established and that the landlord broke this contract. The tenants are therefore entitled to the equivalent of one-month's rent, or \$2,300.00 as a result of the contravention.

As the tenants are being granted a monetary award related to the inconvenience they experienced, I decline to award the tenants compensation related to the pad rental and storage. Providing the tenants with a monetary award related to these matters would place an excessive burden on the landlord and would amount to punishing the landlord twice.

As the tenants were successful in their application, they may recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a Monetary Order of \$2,400.00 in favour of the tenants as follows:

Item	Amount
Compensation Agreed upon for Loss of Rental Unit	\$2,300.00
Recovery of Filing Fee	100.00
<b>Total =</b>	<b>\$2,400.00</b>

The tenants are provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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.

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: November 15, 2017

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Residential Tenancy Branch