



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL, MNDC, OLC, FF, O

### Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution (the Application) pursuant to the *Residential Tenancy Act* ("the Act") for:

- cancellation of the landlords' Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

All named parties attending the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Landlord R.I. (the landlord) and Tenant G.T. (the tenant) stated that they would be the primary speakers during the hearing.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application and evidentiary package which was sent to them by registered mail on September 29, 2017. In accordance with section 88 and 89 of the Act, I find the landlords were duly served with the Application and evidentiary package.

The tenants submitted an Amendment to an Application for Dispute Resolution (the Amendment) and additional evidence to the Residential Tenancy Branch on November 20, 2017, which was sent to each landlord prior to that on November 15, 2017, by way of registered mail. The landlord confirmed this service. In accordance with sections 88

and 89 of the *Act*, I find the landlords were duly served with the Amendment and additional evidence.

The tenant acknowledged receipt of the landlords' evidentiary package which was sent to the tenants by way of registered mail on November 13, 2017. In accordance with section 88 of the *Act*, I find the landlords were duly served with the tenants' evidence.

At the outset of the hearing the tenant testified that they are no longer in the rental unit and are not disputing a Two Month Notice. The landlord confirmed this to be true.

As the tenants are no longer in the rental unit, the tenants' Application to cancel the Two Month Notice is dismissed, without leave to reapply. I find that no order of possession is required pursuant to section 55 (1) of the *Act* as the landlords confirmed that the tenants have already vacated the rental unit,

#### Issue(s) to be Decided

Are the tenants entitled to a monetary award for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlords?

#### Background and Evidence

The tenant testified that this fixed term tenancy began on June 01, 2015, with a monthly rent of \$1,132.00 due on the first day of each month. The tenant submitted that a security deposit of \$550.00 was paid to the landlord and that the landlord returned the security deposit to the tenants shortly after the tenancy ended. A copy of the first page of the fixed term tenancy agreement was entered into evidence by the tenants and shows that this tenancy was to end on June 30, 2017, with the tenants having initialed their acknowledgement that they were required to vacate the rental unit on this date.

The tenants also submitted into evidence:

- copies of e-mail exchanges between the landlords and the tenants in which the landlords and tenants agree to extend their fixed term tenancy on November 01, 2016, and another in which the landlord tells the tenants on June 10, 2017, that

they will give some type of reward to the tenants for being cooperative with the sale of the rental unit;

- A copy of an e-mail exchange dated June 21, 2017, where the landlords notify the tenants that the new buyers want possession of the rental unit and the landlords offer the tenants to stay until August 26, 2017 with free rent for the three weeks in August 2017;
- a copy of a letter dated June 22, 2017, from the landlords to the tenants advising the tenants that they are willing to extend the tenancy until August 26, 2017, and offering the tenants free rent for August 2017 up until August 26, 2017;
- a copy of a letter dated June 28, 2017, from the tenants notifying the landlords that, due to an impending vacation in August 2017, the tenants intend to vacate the rental unit by July 24, 2017; and
- a series of e-mails exchanged between the landlords and the tenants discussing compensation and whether the tenants are entitled to it as well as an e-mail dated September 11, 2017, from the landlord offering the tenants a cheque in the amount of \$182.60 (\$36.50 per day for five days = \$182.60) pro-rated compensation for days that the tenants did not stay in the rental unit for July 2017. The tenants indicated in their evidence package that they did not respond to the landlords regarding this offer.

The tenants also submitted a copy of a monetary worksheet into evidence showing the details of the tenants' amended monetary claim comprising of one month's rent for compensation in the amount of \$1,132.00, pro-rated rent in the amount of \$146.07 ( $(\$1,132.00/31\text{days}) \times 4\text{ days}$ ) for the tenants vacating the rental unit on July 27, 2017, the cost of sending registered mail to the landlords in the amount of \$35.54 and the cost of the filing fee for this Application in the amount of \$100.00 for a total monetary claim of \$1,413.61.

The landlords submitted into written evidence a copy of a written statement dated November 02, 2017, explaining the landlords' positions in regards to each of the tenants' claims

The tenant testified that they had a fixed term tenancy with the landlords which required the tenants to vacate the rental unit on June 30, 2017. The tenant submitted that the tenancy was extended a few times leading up to this date and that the landlords offered to extend the tenancy again at the end of the June 2017 on a month to month basis with an offer of compensation in the form of three weeks free rent for August 2017 until the tenants were required to vacate on August 26, 2017. The tenant stated that due to life circumstances of their own, they gave written notice on June 28, 2017, to vacate the

rental unit effective as of July 24, 2017. The tenant stated that they thought they had a month to month contract after June 30, 2017, and were owed compensation based on the landlords' offer and the tenants being evicted due to the sale of the rental unit.

The landlord stated that they never offered a month to month tenancy to the tenants at the end of June 2017 and that the compensation for landlords' use of the property is not applicable as no Two Month Notice was served to the tenants. The landlord testified that they never forced the tenants to vacate the property as the tenancy was to end as per the vacate clause in the tenancy agreement on June 30, 2017. The landlord submitted that they offered a fixed term extension to the tenancy up until August 26, 2017, with an offer of compensation only for the weeks in August 2017 up to the 26<sup>th</sup>. The landlord further submitted that there was no month to month tenancy after June 30, 2017.

The landlord stated that the tenants wanted the landlords to check with the new owners to see if they would allow the tenants to remain in the rental unit but that the new owners refused. The landlord testified that the tenants then gave their own written notice to vacate the rental unit. The landlord maintained that the tenants were aware of the landlords intention to sell the property for months prior to the actual sale and that the landlords could not offer a month to month extension to the tenancy due to these circumstances. The landlord stated that the tenants were aware that they were going to have to move from the unit as of June 30, 2017, and that any extension offered was only for a fixed period.

### Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 49 of the *Act* establishes that a landlord may issue a Two Month Notice upon the sale of the property and when the purchaser indicates in writing that the purchaser

intends on occupying the rental unit. Section 50 (1) (a) of the *Act* states that a tenant may end a tenancy early by giving the landlord at least 10 Days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice. Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end tenancy under section 49 of the *Act* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 44 (1) (b) states that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides the tenant will vacate the rental unit on the date specified as the end of the tenancy.

I have reviewed all documentary evidence and affirmed testimony and I find that there is no evidence that the landlords served the tenants with the Two Month Notice under section 49 of the *Act* to end the tenancy. I find that the tenancy was to end on June 30, 2017, pursuant to section 44 (1) (b) of the *Act*. I find that the landlords' past offers of extensions to the tenancy were for fixed terms with a fixed vacate date. I find that the offer of an extension from the landlords to the tenants in June of 2017 was for another fixed term with the tenants to vacate the rental unit on August 26, 2017.

I find that any compensation offered to the tenants was not due to any obligation under section 49 of the *Act*. I find it that it would not be reasonable to conclude that the landlords offered a month to month tenancy to the tenants when the landlords had already sold the rental unit and knew that they had to give possession of the rental unit to the new owners as of September 01, 2017.

I find that the tenants only accepted the extension of the fixed term until the end of July 2017 and gave their own notice, of their own volition, under section 45 of the *Act* to end the tenancy as of July 24, 2017. I find that the tenants forfeited any compensation offered by the landlord for August 2017 by choosing to end the tenancy in July of 2017.

For the above reasons, I find that the tenants have not suffered any loss under section 49 of the *Act* and I dismiss the tenants' Application for one month's compensation, without leave to reapply.

As the *Act* does not provide for the recovery of costs associated with pursuing a claim against a party to a tenancy, with the exception of the filing fee for the Application pursuant to Section 72(1) of the *Act*, I dismiss the tenants' claim for the costs of their registered mailings, without leave to reapply.

Regarding the tenants' claim for pro-rated rent for July 2017, I find that the landlords offered to compensate the tenants for the July 2017 pro-rated rent in the amount of \$182.60, in an e-mail sent to the tenants on September 11, 2017, which the tenants did not indicate that they accepted, before the tenants filed their Application on September 21, 2017. I further find the landlords did not dispute the amount of \$146.07 for four days claimed by the tenants during the hearing.

For the above reasons, I find that the tenants are entitled to a monetary award in the amount of \$146.07 pursuant to section 67 of the *Act*. For the same reasons listed above, I find that the recovery of pro-rated rent from the landlords was never in dispute and I dismiss the tenants' claim to recover the filing fee for this Application, without leave to reapply.

#### Conclusion

Pursuant to section 67 of the *Act*, I grant a monetary order in the favour of the tenants in the amount of \$146.07 against the landlords. The tenants are provided with this Order in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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.

The remainder of the tenants' 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: December 18, 2017

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Residential Tenancy Branch