



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL, MNDCT, OLC

### Introduction

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

- an order compelling the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49; and
- a monetary order for compensation for loss or damage under the Act, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlords acknowledged receipt of evidence submitted by the tenant. The landlords did not submit any documentation for this hearing. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order to compel the landlord to comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to a monetary order for compensation for loss or damage under the Act, regulation or tenancy agreement?

## Background and Evidence

The tenant gave the following testimony. The tenant moved into the unit on November 1, 2012 and pays \$600.00 in rent. The tenant testified that he provided a \$300.00 security deposit at the outset of the tenancy. The tenant testified that the landlord “cut off” his cable, internet and laundry in September 2017 without notice and without a rent reduction. The tenant testified that he seeks \$900.00 for the loss of cable and internet and \$240.00 for the loss of using the laundry facilities. The tenant testified that he is challenging the notice as he does not believe that the landlord will be moving in.

The landlords gave the following testimony. Both landlords confirmed that their aunt and uncle are coming from India and wish to move in on May 1, 2018. The landlord testified that they issued a 2 Month Notice for Landlord’s Use of Property on February 15, 2018 so that the tenant will move out by the end of April to allow their aunt and uncle to move in. The landlords testified that the cable, internet and laundry were never part of the tenancy agreement and that the tenant has withheld rent for several months.

## Analysis

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 arguments are reproduced here. The principal aspects of the tenant’s claim and my findings around each are set out below.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Both parties confirmed that there isn’t a written tenancy agreement and that all conditions of the tenancy have been verbal. The tenant testified that he has “a stack of receipts” to prove his claim, however the tenant did not submit those receipts for this hearing. In addition, the landlords adamantly dispute that the terms of the tenancy as

submitted by the tenant. Based on the conflicting testimony and the insufficient documentary evidence before me, the tenant has failed to provide sufficient evidence to be successful, accordingly; I dismiss this portion of their application.

The landlords issued a notice pursuant to section 49(1) of the Act. That section reads as follows:

**Landlord's notice: landlord's use of property**

**49** (1) In this section:

**"close family member"** means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse

The landlords both confirmed that their aunt and uncle will be moving in. In the result, the landlords have issued a notice that is not in accordance with the ground as listed above, accordingly; I set aside.

Conclusion

The 2 Month Notice for Landlords Use of Property dated February 15, 2018 is cancelled, it is of no force or effect. The tenancy continues. The tenant's monetary claim is dismissed in its entirety 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: April 26, 2018

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Residential Tenancy Branch