



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** FFL MNDCL-S MNDL-S OPL CNL FFT OLC PSF RP RR

### Introduction

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

The landlords requested:

- a monetary order for compensation for loss or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an Order of Possession for Landlord’s Use pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenants requested:

- cancellation of the landlords’ 2 Month Notice to End Tenancy for landlord’s own use (the 2 Month Notice) pursuant to section 46;
- an order to the landlords to make repairs to the rental unit pursuant to section 33; and
- an order to the landlords to provide services or facilities required by law pursuant to section 65;
- 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; and
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

While the landlords attended the hearing by way of conference call, the tenants did not. I waited until 11:38a.m. to enable the tenants to participate in this scheduled hearing for 11:00 a.m. The landlords were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the tenants did not attend this hearing, their entire application is dismissed without leave to reapply.

The landlord gave sworn testimony that on February 23, 2018 copies of the Application for Dispute Resolution hearing package ('Application') and evidence were personally served to the tenants. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with copies of the landlord's application and evidence.

### **Issue(s) to be Decided**

Are the landlords entitled to an Order of Possession?

Are the landlords entitled to a Monetary Order for losses and unpaid utilities?

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

### **Background and Evidence**

The landlord gave undisputed testimony regarding the following facts. This month-to-month tenancy began on September 1, 2013, with monthly rent currently set at \$1,430.00, payable on the first of each month. The landlords collected, and still hold, a security deposit of \$675.00. The tenants continue to reside in the rental unit.

The landlords testified in the hearing that they had intended to serve the tenants a 2 Month Notice to End Tenancy for Landlord's Use on February 6, 2018. The landlords admitted that the 2 Month Notice was incorrectly issued on the wrong form. The landlords served the tenants with a Mutual Agreement to End Tenancy, which was not signed by the tenants. The tenants, shortly thereafter, filed an application to cancel this "2 Month Notice" on February 21, 2018. On March 21, 2018 the landlords served the tenants with a new 2 Month Notice on the proper form to replace the one served on February 6, 2018. The landlords testified that they had served the tenants with the 2 Month Notice because of water damage to the home, and black mold. The landlords believed that the tenants were responsible for this damage, and they indicated on the 2 Month Notice that they wished to perform repairs and renovations to the home.

The landlords called a witness in this hearing, who is their contractor. The witness testified that the home had mildew on the windows, and in the closet, and after inspection he could not locate the source of any water leak. He also testified that he felt that the home was extremely humid, and felt that the tenants were not properly ventilating the home. The witness stated that he "could feel it in my lungs". The contractor expected that the renovations would take 2 months to complete, and the concrete dust would be hazardous to the health of all occupants.

The landlords are also seeking \$3,000.00 for repairs to the home, and \$396.00 in unpaid utilities. The landlords testified that \$3,000.00 was the estimate for repairs to the home. The landlords did not submit documentation to support the amount of utilities owing, but testified that the tenants were presented with the statement.

## **Analysis**

Section 55(1) of the *Act* reads as follows:

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Subsection 49(6) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord, in good faith, has all the necessary permits and approvals required by law and intends in good faith, to... renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Section 52 of the *Act* provides the following requirements requiring the form and content of notices to end tenancy:

**52** *In order to be effective, a notice to end a tenancy must be in writing and must*

(a) *be signed and dated by the landlord or tenant giving the notice,*

(b) *give the address of the rental unit,*

(c) *state the effective date of the notice,*

(d) *except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*

(e) *when given by a landlord, be in the approved form...*

The "2 Month Notice" served to the tenants by the landlords on February 6, 2018 does not comply with Section 52(e) as the notice given to the tenants was a Mutual Agreement. The "2 Month Notice" does not comply with section 52(d) as it does not state the grounds for ending the tenancy. The "2 Month Notice" served to the tenants on February 6, 2018 is invalid on several counts.

The landlords' "2 Month Notice" dated February 6, 2018 to the tenants is clearly deficient on multiple levels. In their own testimony the landlords' testified that they became aware that the Notice was not issued in the correct form, and the landlords re-served the tenants a new 2 Month Notice on March 21, 2018.

I find that the notice served on February 6, 2018 had no legal effect because it did not comply with the requirements of section 52(d) and (e) of the *Act*. Under these circumstances I am cancelling the landlords' "2 Month Notice" issued on February 6, 2018 as it does not comply with section 52 of the *Act*.

On March 21, 2018 the landlords served the tenants with a new 2 Month Notice.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:*

*“If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.*

*If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.”*

Although the landlords stated that they had issued the 2 Month Notice in order to renovate the suite, I find that the landlords have not met their burden of proof to show that they issued the 2 Month Notice in good faith. I find that the testimony of the landlords during the hearing raised questions about the landlord's good faith. The landlords testified in the hearing that the landlord had issues with the tenants and the way they maintained the home, specifically concerns about the humidity in the home that the landlords and contractor have attributed to the tenants' "cranking of the heat". Section 49(6) does not provide for undesirable behavior by the tenants as a reason to end the tenancy by way of a 2 Month Notice.

I find that the landlords have not met their burden of proof to show that they do not have any other purpose in ending this tenancy. Based on a balance of probabilities and for the reasons outlined above, I find that the landlords have not met their onus of proof to show that the landlord, in good faith, require the tenants to permanently vacate their rental unit for the specific purpose of repairs or renovations.

Accordingly, I am not granting an Order of Possession for Landlord's Use. The landlords' 2 Month Notice, dated March 21, 2018, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

The landlord also made a monetary claim of \$3,000.00 in repairs. 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 or 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 landlords to prove, on a balance of probabilities, that the tenants had caused the landlords to suffer a loss in the amount of \$3,000.00. I find that the landlords have not provided sufficient evidence to support that the tenants have contravened the *Act* in any way, nor am I satisfied that the landlords have provided sufficient evidence to support that they had suffered a \$3,000.00 loss due to this contravention. On this basis, I dismiss this portion of the landlords' monetary claim without leave to reapply.

The landlords are also seeking \$396.00 in unpaid utilities for this tenancy. I am not satisfied that the landlords have provided sufficient documentary evidence to support the amount owed by the tenants, and that they were presented with the statement for this amount. On this basis, this portion of the landlords' application is dismissed with leave to reapply.

The recovery of the filing fee is normally awarded to the successful party after a hearing. As the landlords were not successful in their application, the landlords' application to recover the filing fee is dismissed.

### **Conclusion**

I dismiss the tenants' entire application without leave to reapply.

I dismiss the landlords' application for a monetary order for unpaid utilities with leave to reapply.

The remaining portion of the landlords' application is dismissed without leave to reapply. The landlords' "notice" dated February 6, 2018 is cancelled, as well as the 2 Month Notice issued on March 21, 2018. The tenancy will continue until ended in accordance with the *Act*.

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: May 9, 2018

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Residential Tenancy Branch