



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT FFT

### Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both named parties attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant RW primarily spoke on behalf of both co-tenants (the "tenant"). The landlord was assisted by an interpreter.

As both parties were present service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence. The tenant confirmed receipt of the landlord's evidence. Based on the testimonies I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover the filing fee from the landlord?

### Background and Evidence

While I have turned my mind to all the evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in November, 2017 and ended June 30, 2018 pursuant to a 2 Month Notice to End Tenancy for Landlord's Use dated April 9, 2018. The monthly rent was \$1,450.00 payable on the first of each month. A security deposit of \$700.00 was paid at the start of the tenancy and was returned in full to the tenants by a cheque dated July 14, 2018. The rental unit is a basement suite in a detached home. The landlord resides in the main floor of the building.

The tenants seek a monetary award of \$18,219.00 for the following items:

<b>Item</b>	<b>Amount</b>
Moving Costs	\$119.00
Penalty for Late return of Security Deposit	\$700.00
Compensation for Wrongful Eviction	\$17,400.00
<b>TOTAL</b>	<b>\$18,219.00</b>

The tenants testified that they provided a forwarding address to the landlord prior to the tenancy ending on June 30, 2018. The tenants submit that they did not receive the return of the security deposit until July 18, 2018 outside of the 15 days provided under the Act for a return of the deposit. The tenants testified that they have not given written authorization that the landlord may retain any portion of the security deposit.

The 2 Month Notice of April 9, 2018 provides the reason for the tenancy ending is that the landlord or a close family member of the landlord will occupy the rental unit. The tenants submit that the landlords have not accomplished the stated purpose and they believe the suite to be vacant. The tenant testified that prior to the tenancy ending they had conversations with the landlord's adult son who stated they did not know what would happen to the suite. The tenants submitted into evidence a screenshot showing the property as listed for sale in July, 2018 and stating that the suite is vacant for easy showing.

The landlord gave evidence that their adult son resides in the rental suite. They testified that the plan was for the adult son to reside in the suite in order to allow more privacy

and independence. The landlord's son testified that while he works in a different municipality several days of the week they primarily reside in the suite. The landlord's son testified that they do not recall informing the tenants that the purpose of the suite was undecided prior to the tenancy ending.

The landlord called several neighbors as witnesses who all uniformly testified that they believe that the rental suite is occupied by the landlord's son.

The landlord called their realtor as a witness and they explained that while the property has been listed a condition for sale is that the property transfer would not occur until February, 2019. The realtor testified that the listing stating that the suite is vacant refers to the fact that it is occupied by the property owner's son and therefore notice, as would be required for an arm's length tenant, is not necessary for showings.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the evidence of the parties that this tenancy ended on June 30, 2018 and the landlord was provided a forwarding address by the tenants on or prior to that date. The landlord issued a cheque dated July 14, 2018 for the full amount of the security deposit. The landlord testified that they mailed the cheque to the tenants on that same date. In accordance with sections 88 and 90 of the *Act*, by mailing the security deposit on July 14, 2018 I find that the payment is deemed received on July 19, 2018, five days after mailing. Accordingly, I find that the security deposit was not returned within 15 days of June 30, 2018 as required under the *Act*. I accept the tenants' evidence that they have not given written authorization that the landlord may retain any portion of the security deposit. Therefore, I issue a monetary award in the amount of \$700.00, double the security deposit less the amount already paid, in the tenant's favour.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find that there is no evidentiary basis for the tenant's claim for the cost of moving. Based on the evidence of the parties this tenancy ended by way of the 2 Month Notice of April 9, 2018. I find that there is no evidence that the costs of moving incurred by the tenants arise as a result of any contravention on the part of the landlord. Accordingly, I dismiss this portion of the tenants' application as they have not met their evidentiary burden to show on a balance of probabilities that they have incurred losses as a result of a violation by the landlord.

The tenants seek a monetary award of \$17,400.00, the equivalent of 12 times the monthly rent payable under the tenancy agreement.

The *Interpretation Act* provides that amendments to an Act come into force at the beginning of the day of commencement. Legislative changes were made to the *Act* effective May 17, 2018. These changes are not retroactive. Therefore the amendments to the Act do not apply to this application in regards to a 2 Month Notice dated April 9, 2018.

Section 51(2) of the *Act*, as it was prior to May 17, 2018, states if:

- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
- (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I accept the undisputed evidence that the tenants were issued a 2 Month Notice which stated that the landlord or a close family member intends to occupy the rental unit. I find based on the totality of the evidence that the landlord has shown that the suite is being used for the stated purpose and is occupied by the landlord's adult son.

While the tenants gave some evidence that gave rise to doubts and uncertainty I find that the landlord and their witnesses have sufficiently addressed the concerns and

ambiguities. I accept the landlord's evidence that while their son spends some time in a different municipality for employment they reside in the rental suite. I find that it is not necessary that an occupant spend every night in the suite to meet the definition of occupying the suite. I accept the evidence of the neighbors that they have witnessed the landlord's son residing in the rental suite.

I accept the evidence of the landlord's relator that while the property has been listed for sale the conditions for sale provide that possession will not occur until February 1, 2019. I find the landlord's testimony that the indication that the suite is unoccupied to refer to the ease for the purchaser to view the suite to be convincing and reasonable. While the tenants submitted that this is an unorthodox method for listing and attempting to sell a residential property, I find that there is insufficient evidence that the rental suite is not being used for the purposes set out in the 2 Month Notice.

I find that the tenants have not shown on a balance of probabilities that the rental suite is not being used for the stated purposes on the 2 Month Notice. Therefore, I dismiss this portion of the tenants' application.

As the tenants' application was successful in part I find that the tenants are entitled to recover their filing fee.

### Conclusion

I issue a monetary award in the tenants' favour in the amount of \$800.00.

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: December 11, 2018

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Residential Tenancy Branch