



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) for monetary compensation in the amount of one month of rent, and for the recovery of the filing fee paid for this application.

The Tenants and the Landlord were present for the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants’ evidence by registered mail. The Tenants confirmed receipt of the Landlord’s evidence package by registered mail. As such, I find that both parties were duly served in accordance with Sections 88 and 89 of the *Act*.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

Are the Tenants entitled to monetary compensation?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The Tenants have applied for compensation in the amount of \$2,000.00, equivalent to one month of rent. They submitted a written statement into evidence that outlines the events that occurred and provided testimony regarding why they ended their tenancy shortly after the tenancy began.

The Tenants went to view the potential rental property on September 23, 2018. They stated that at that time there was an odour in the rental unit that the Landlord attributed to the current tenant's hockey gear that was drying in the lower level of the unit. The Tenants noted that the heat was off in the unit and the doors were open. They also noticed a faint odour in the upstairs of the rental unit and stated that the Landlord told them it was due to the current tenant's plants and other belongings.

As the Tenants believed the odour was due to the current tenant's belongings, they accepted the rental and signed a tenancy agreement with the Landlord on October 2, 2018 for a tenancy set to commence on October 15, 2018. The tenancy agreement was submitted into evidence and shows that the agreement was for a fixed term of one year, set to end on October 15, 2019.

The Tenants testified that a security deposit of \$1,000.00 was paid to the Landlord on October 2, 2018. The Tenants stated that their security deposit has been returned in full.

On October 15, 2018, the Tenants paid their first month of rent in the amount of \$2,000.00 and began moving their belongings into the rental unit. The Tenants submitted a copy of the e-transfer from their bank showing the rent payment. They continued moving their belongings into the unit over the period of October 15 to October 21, 2018.

The Tenants stated that the smell in the rental unit was just as strong when they began moving in, despite the previous tenant's belongings no longer being in the home. They testified that the odour smelled like rodent urine, so they advised the Landlord that pest control should attend the rental unit.

The Tenants testified that pest control came and stated that there were no rats, but potentially some mice in the rental unit. During the period the Tenants were moving their

belongings into the unit, the Landlord was having some work completed, such as painting and installation of lights. The Tenants never stayed overnight at the rental unit.

The Tenants stated that after painting in the unit was complete, the odour had slightly improved. However, when the Tenants turned the heat on, they stated that the smell became stronger and they both felt ill, leading them to think that rodent urine or other evidence of rodents may be present in the heating system.

The Tenants submitted into evidence a photo showing a mousetrap and dirt under the stove, as well as photos of two deodorizer bags that the Landlord provided to try to deal with the odour. The Tenants stated that the two deodorizer bags did little to fix the smell in the rental unit and that many more would have been required for the size of the space.

The Tenants messaged the Landlord to meet and talk about solutions but stated that the Landlord was unwilling to provide further solutions. Instead, the Tenants stated that they were asked if they wanted to give their one month notice to end the tenancy. The Tenants said they gave in and agreed to end the tenancy since no solutions were being provided for them to stay in the rental unit and have the source of the odour determined.

Emails regarding the Tenants' concerns with the odour were submitted into evidence by the Landlord. The Tenants stated that while the Landlord initially connected the odour to the previous tenant's hockey gear, plants and other belongings, that through email communication the Landlord stated that the odour was historic.

The Tenants stated that when it was discovered that the odour was not connected to the previous tenant's belongings, the Landlord should have taken further steps to determine the source of the smell in the rental unit.

The Tenants testified that after telling the Landlord they would end their tenancy, they moved their belongings out and left the keys and a letter to end the tenancy for the Landlord in the rental unit on October 26, 2018.

The Landlord provided testimony that she has owned the rental property for 4.5 years and has never had any complaints about odour in the rental unit. She stated that she had professional cleaners into the rental unit prior to the Tenants moving in and also worked on completing upgrades to the property. She agreed that a tenancy agreement was signed for the tenancy to commence on October 15, 2018.

The Landlord stated that when the Tenants mentioned concern regarding an odour, she responded right away. However, as no reason for a smell was detected, the Landlord stated that the smell the Tenants were noticing was likely due to the rental unit being an old home in a rural area.

After having a conversation with the Tenants about their concerns, the Landlord stated that she requested formal written notice from the Tenants to end their tenancy. She submitted the letter from the Tenants, dated October 25, 2018, into evidence. In the letter, the Tenants asked for their security deposit and rent money to be returned and provided a forwarding address. The Landlord advertised the rental unit for re-rental right away and was able to find new tenants for November 15, 2018.

The Landlord submitted into evidence an email from her electrician stating that he was in the home installing lights on October 16, 2018 and did not notice any odour. An email from the painter was also submitted stating that he was in the home October 20<sup>th</sup> and October 21<sup>st</sup> and did not notice any odours. A third email submitted into evidence was from the previous tenants stating that they lived in the rental unit from May 15, 2016 until October 15, 2018 and did not notice any adverse odours during that time. They also stated that they cleaned prior to moving out and were aware that the Landlord had hired a professional cleaner as well. The Landlord also submitted an invoice dated October 19, 2018 for the purchase of three odour removal bags.

The Landlord stated that she warned the Tenants of the hockey gear smell at their first visit to the rental unit as she was aware the hockey gear was drying in the lower level of the rental unit. However, when the Tenants began moving their belongings in and advised the Landlord of a smell, the Landlord stated that she tried to deal with their concerns. As she had not been in the rental unit much, she accepted that there may be an issue which she dealt with right away but was unable to determine that there was an odour or to determine a source of a potential odour.

### Analysis

The parties were in agreement that a tenancy agreement was entered into on October 2, 2018 for a tenancy set to begin on October 15, 2018.

I refer to Section 16 of the *Act* which states the following:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Although an odour was noticed when viewing the rental unit, the Tenants accepted the Landlord's explanation of the source of the smell and made the decision to enter into a binding contract, thus accepting that they were responsible for rent during the time the tenancy continued.

As such, I find that the tenancy began on October 15, 2018, regardless of whether the Tenants stayed at the rental unit or how soon after the tenancy began the Tenants had concerns about the rental unit. After entering into a tenancy agreement, both parties have responsibilities that begin when the agreement is signed. One of those responsibilities is the payment of rent as stated under Section 26 of the *Act*, which states that rent must be paid when it is due. The Tenants followed through on this responsibility and paid \$2,000.00 as due on October 15, 2018.

The Tenants have claimed for the return of one month of rent in the amount of \$2,000.00 that they paid for the period of October 15, 2018 to November 18, 2018. As stated in rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. As the parties were not in agreement as to whether the Tenants are entitled to the return of \$2,000.00, the Tenants have the burden of proof to establish that they are entitled to this compensation.

The Tenants provided written statements and verbal testimony regarding an odour in the rental unit. However, the Landlord submitted a letter from a painter and electrician who were in the rental unit during this time, as well as the previous tenants who all stated that they did not notice any adverse odour in the rental unit. As such, given the evidentiary material from the Landlord, I do not find that the Tenants submitted sufficient evidence to establish that there was an odour in the rental unit.

Regardless of whether there was an odour, when the Tenants ended the tenancy on or around October 25, 2018, I find that the proper process for ending a tenancy under the *Act* was not followed. In accordance with Section 45(1) of the *Act*, at least one full month of notice must be provided in writing. As this was a fixed term tenancy, Section 45(2) of the *Act* also applies in which tenants cannot end the fixed term prior to the end

of the term. However, the Tenants provided notice to end their tenancy and the Landlord was able to find new tenants for November 15, 2018.

As the Tenants have applied for compensation, I refer to Section 7 of the *Act* which states the following:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

As the Tenants have claimed compensation, they must establish that the Landlord breached the *Act* and that they experienced a loss as a result. While the Tenants testified that they believe the Landlord misrepresented the odour at their first visit to the rental unit, and that the Landlord did not take appropriate measures to respond to their concerns regarding the presence of an odour, I am not satisfied that the Tenants proved that the Landlord was in breach of the *Act*.

Therefore, I find that the Tenants did not meet the burden of proof to establish, on a balance of probabilities, that they are entitled to \$2,000.00 of compensation. As the Tenants were not successful with their application, I decline to award the recovery of the filing fee.

### Conclusion

The Tenants' Application for Dispute Resolution 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 14, 2018

---

Residential Tenancy Branch