



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCT**

### Introduction

This hearing dealt with the tenants' 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.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance service of documents was confirmed. The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and evidence on September 24, 2018. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenants' application for dispute resolution.

### Issue(s) to be Decided

Are the tenants entitled to compensation because the landlord did not occupy the rental unit after ending the tenancy for this purpose?

### Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and relevant evidence are set out below.

The tenants testified that they rented the upstairs unit in a house with two suites. The tenancy began in June 2016 and ended in early July 2018. It was a fixed term tenancy for one year that converted to a month to month tenancy when the original term expired.

The rent for the suite was \$1,660.00 at the time the tenancy ended. There are two landlords named on the tenancy agreement, AR and CI.

On May 1, 2018, the tenants received a 2 Month Notice to End Tenancy (Notice) for Landlord's Use of Property dated May 1, 2018. The Notice stated the purpose of ending the tenancy is because :

*The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

The tenants secured a new rental unit and moved out on July 5, 2018. The landlord gave the tenants one month free rent for the month of June to compensate the tenants for ending the tenancy.

The tenants claim they were led to believe that CI, the other landlord named on the tenancy agreement, was going to occupy the entire house and this has not happened. They have spoken with residents of the neighbouring properties who told them that they do not believe CI has moved in. According to their former neighbour, there is currently a woman and girl living in the upper unit and a man living in the lower unit. The tenants say that they have met woman living in the upper unit and suspect she is not related to either CI or the landlord however they cannot confirm this.

The landlord testified that the reason for ending the tenancy on the Notice is accurate. The landlord and CI, were experiencing personal issues that required them to separate and CI was going to move into the rental unit. CI works a 2 week on/2 week off shift and this explains why the neighbours may not have seen him at the property since he moved in. CI is living in the unit and the woman and girl living in the upper unit are CI's new partner and her daughter.

### Analysis

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/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 tenants to prove on the balance of probabilities that the landlord failed to occupy the rental unit.

The tenants have provided me with speculation based on the observations and opinion made by their former neighbours who were not called as witnesses. The tenants testified they believe the female occupants of the rental unit are not residing with CI, however they have no evidence to substantiate their belief.

The landlord gave sworn testimony that landlord CI moved into the rental unit and is residing there with two other people. No substantive evidence was provided to contradict this testimony.

I am not satisfied the tenants have met the burden of proof to demonstrate on a balance of probabilities that the landlord CI did not move into the rental unit. I dismiss the tenants' claim for a compensation without leave to reapply.

### Conclusion

The tenants' claim for a monetary order is dismissed.

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: January 11, 2019

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Residential Tenancy Branch