



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, RPP, FFT

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution (the Application) pursuant to the *Residential Tenancy Act* ("the Act") for:

- an order requiring the landlord to return the tenants' personal property pursuant to section 65;
- 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.

The landlords and the tenants attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. Landlord K.R. (the landlord) and Tenant J.B. (the tenant) indicated that they would be primary speakers during the hearing. At the outset of the hearing the landlord requested to have Landlord A.R.'s last name amended on the Application, which I have done pursuant to section 64 of the Act.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (Application) which was personally served to an adult who resides with the tenants on December 16, 2018. Although not served in accordance with section 89 (1) of the Act, I find the tenants are duly served with the Application pursuant to section 71 (c) of the Act, which allows an Arbitrator to find a document sufficiently served for the purposes of the Act.

The landlord acknowledged receipt of the tenants' evidence which was personally served to them on January 14, 2019, but indicated that they did not receive it in accordance with the Rules of Procedure.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure (the Rules) states that documentary evidence intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that the tenant did not serve the landlords with their evidence in accordance with the Rules, however; considering the amount of evidence provided by the tenants, I find that 10 days is sufficient time for the landlords to have reviewed it and responded to it. For this reason I will consider it and in accordance with section 88 of the *Act*, I find that the landlords have been duly served with the tenants' evidentiary package.

The landlord confirmed that they submitted evidence to the Residential Tenancy Branch but that they did not provide the tenants with their evidence as the landlord stated that he did not have their address.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure states that documentary evidence intended to be relied on at the hearing by the respondent must be received by the applicant not less than 7 days before the hearing. I find that the landlord had an address for service which was provided on the notice of hearing documents that they could have sent it to and that it would have been the responsibility of the tenants to obtain the evidence served to that address. As the landlord confirmed that they did not serve the tenants with their evidence, I find that the tenants may be prejudiced by this as they did not have a chance to respond to the landlords' evidence. For this reason the landlords' evidence is not accepted for consideration.

#### Issue(s) to be Decided

Are the tenants entitled to a monetary award for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to return the tenants' personal property?

Are the tenants entitled to authorization to recover the filing fee from the landlords?

#### Background and Evidence

The landlord and the tenant agreed that this tenancy began on December 01, 2018, with a monthly rent in the amount of \$1,100.00. The parties agreed that the tenants paid a total of \$2,000.00 to the landlords for December 2018 rent with a security deposit in the amount of \$550.00 and a pet damage deposit in the amount of \$350.00.

The tenants submitted in evidence:

- A list of items that they are requesting to be returned by the landlord;

- A copy of an e-mail transfer to Landlord K.R. in the amount of \$2,000.00;
- A series of text message exchanges between the landlord and the tenants' friend in which the tenants' friend informs the landlord that they are at the rental unit and ready to move in some of the tenants' items but that the landlords' roommate denied access and is acting in a strange manner as he does not recognize her even though they met the day before. The landlord indicates that the tenants' friend can move things into the rental unit and instructs their roommate to assist but the tenants' friend expresses that they are not comfortable with the situation and leaves the items in the driveway. Another text message concerns the landlord indicating that they did not want the tenants to move into the rental unit in the late evening, after 9:00 p.m., due to the tenants' sleeping kids. The tenants' friend at that point questions the landlords' motives and whether they are legitimate; and
- A series of text messages exchanged between the tenant and the landlord regarding the tenant stating that the landlord should let them stay at the place or do the right thing and refund the tenants' money which the landlord offers to do.

The tenant submitted that they entered into a tenancy agreement with the landlords and that the landlords denied access to the rental unit on two occasions. The first incident was when their friend went to move furniture into the rental unit and the landlords' roommate stated that he was not aware of the situation and closed the door on the tenants' friend. After discussion between the landlord and the tenants' friend by text, the roommate came out to talk to the tenants' friend, who felt uncomfortable with the roommate and did not want to remain alone with them as their movers had left. The tenant confirmed that their friend left the tenants' items on the landlords' driveway.

The second incident occurred when the tenants were due to arrive in the city at the airport at 9:00 p.m. and the landlord expressed concern at the tenants moving into the rental unit at a late hour due to their young children who would be sleeping. The landlord requested the tenants to sleep somewhere else and move into the rental unit the next morning. The tenant stated that the landlord had then expressed reservations about the tenancy due to their friend and offered to refund their money.

The tenant confirmed that their items were left in the driveway and that they have not come to retrieve it as they have nowhere to put it. The tenant admitted that they have not been restricted from picking up their belongings from the landlord and stated that it would be at least another couple of weeks before they could get it if they chose to get it at all. The tenant submitted that their monetary claim of \$2,000.00 is for the rent paid of \$1,100.00, the security deposit of \$550.00 and pet damage deposit of \$350.00. The

tenant confirmed that they had not provided a forwarding address to the landlord for the return of their security and pet damage deposit.

The landlord stated that there was a misunderstanding when the tenants' friend came but that eventually the tenants' friend was given access to the rental unit, which they then refused. The landlord testified that they had concerns about too much noise upon the tenants moving in late at night but that it was the tenants who ultimately decided that they were not going to move into the rental unit.

The landlord stated that the tenants' things were dumped in the driveway and that they have offered for the tenants to come and pick it up but the tenants have stated that they are not able to at this time as they have nowhere to put it. The landlord stated that they have covered the tenants' items which still remain in their driveway and are aware of their rights under part five of the Residential Tenancy Regulations concerning abandoned property.

#### Analysis

Regarding the return of the tenants' personal property, having reviewed the affirmed testimony I find that there is no evidence that the landlord has restricted the tenants' ability to retrieve their property and I accept the landlord's testimony that they have made it available to the tenants. I find that the tenant admitted that they did not have any immediate plans to pick it up in the near future even if it is available.

For the above reasons, I dismiss the tenants' request for the landlord to return their personal property, without leave to reapply.

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 16 of the Act establishes that 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. Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Section 45 of the Act establishes that a tenant may end a periodic tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement

Having reviewed all documentary evidence and affirmed testimony, I find that the tenants have not demonstrated that they have suffered any damage or loss due to the violation or neglect of the *Act*, regulations or tenancy agreement by the landlord.

It is understandable that the tenants did not want to move into the rental unit due to the mixed messages being sent from the landlord regarding money being received, the landlord's roommate acting in an erratic manner and not being ready to receive the items when it was previously arranged, the landlord requesting to delay the move in date until the next day when the tenants had already paid to live there and then stating that they would refund the money on multiple occasions.

Despite the above, I find that the tenants entered into a tenancy agreement with the landlords and there was no mutual agreement to end the tenancy signed between the parties. If both parties determined that the tenancy would not work, this is what should have occurred. I find that the tenants had the right to access and move into the rental unit during reasonable hours. If the tenants had actually attended the rental unit, attempted to move in and been denied access, they could have made an Application for Dispute Resolution at that point to either obtain an Order of Possession for the rental unit or have their money returned. I find that the tenants have not demonstrated that they ever actually attempted to move into the rental unit other than having a friend bring some items.

Therefore, I dismiss the tenants' monetary claim in the amount of \$1,100.00 as this is rent that they owed due to the tenancy agreement that was entered into when they paid the first month's rent and deposits.

Section 38 of the *Act* establishes that a landlord is only obligated to address the security deposit after the tenancy has ended and the tenants have provided their forwarding address in writing to the landlords. Section 38 of the *Act* also states that a landlord, upon receiving the tenant's forwarding address, must either repay the security deposit to the tenant or make an application for dispute resolution within 15 days of the tenancy ending. Regarding the remainder of the tenants' monetary claim for the security and pet damage deposits in the amount of \$900.00, I find that the landlord has no legal obligation to return it until the tenants provide a forwarding address pursuant to section 38 of the *Act*.

As the tenants were not successful in their Application, I dismiss their request to recover the filing fee, without leave to reapply.

#### Conclusion

The tenants' Application for compensation equal to the return of their security and pet damage deposit in the amount of \$900.00 is dismissed, with leave to reapply.

The remainder of the tenants' Application 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: January 25, 2019

---

Residential Tenancy Branch