



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDL MNRL-S

Introduction

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

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

RN ("landlord") appeared as agent for the landlord, and had full authority to do so. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants confirmed receipt of the landlord's application for dispute resolution. In accordance with section 89 of the *Act*, I find that the tenants deemed served with the landlord's application for dispute resolution.

Preliminary Issue – Landlord's Evidence

The tenants testified in the hearing that they did not receive the landlord's evidence. The landlord responded that the evidence package was served to the tenants by email as the landlord did not have the tenants' forwarding address.

Section 88 of the *Act* establishes the requirements for service of documents.

How to give or serve documents generally

88 *All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act*

to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;*
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;*
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;*
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;*
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;*
- (i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];*
- (j) by any other means of service prescribed in the regulations.*

As the tenants dispute having received the landlord's evidentiary materials, and as the landlord was not able to provide proof that they had served the tenant in a manner allowed by the *Act*, I find that the tenants were not served in accordance with section 88 of the *Act*. On this basis, I am excluding the landlord's evidentiary materials for the purpose of this hearing.

Preliminary Issue – Tenant's Evidence

The landlord testified in the hearing that they did not receive the tenant's evidence for this hearing, which the tenants testified was served to the landlord by way of registered mail. The tenants were unable to provide the tracking information for the package.

In the absence of the tracking information, as the landlord disputes the receipt of the package, I am unable to determine whether the landlords were served in accordance with section 88 of the *Act*. On this basis, I am excluding the tenant's evidentiary materials for this hearing.

Preliminary Issue: Adjournment of Hearing

The landlord made an application requesting an adjournment during the hearing in order to serve the landlord's evidentiary materials upon the tenants.

The tenants were opposed to the application for an adjournment stating that the matter had been outstanding since September 2018, and that they were ready to proceed. The tenants also expressed concern that they wanted a resolution to this matter as the landlord has not stopped harassing them.

Rule 6 of the Residential Tenancy Branch Rules of Procedure state that the "Residential Tenancy Branch will reschedule a dispute resolution proceeding if written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least 3 business days before the scheduled date for the dispute resolution hearing".

The criteria provided for granting an adjournment, under Rule 6.4 are;

- whether the purpose for the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1...
- whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether the party had sufficient notice of the dispute resolution hearing...
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- the possible prejudice to each party.

I find that both parties had ample time to prepare for this hearing. I find that this matter has been outstanding for some time, and any further delays would be prejudicial to the tenants. I am not satisfied that the adjournment would contribute to a resolution of this matter.

The request for an adjournment was not granted. The hearing proceeded.

The landlord indicated in the hearing that they wished to withdraw their monetary claim for \$15,000.00 in damages and losses at this time, and would like to proceed only with the unpaid rent portion of their claim. Accordingly, the landlord's monetary claim was cancelled with the exception of the application for \$746.95 in unpaid rent for this tenancy.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent and losses?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This month-to-month tenancy began in December 2013, with monthly rent set at \$746.95, payable on the 15th day of the month. The monthly rent was set by the Arbitrator at that amount after the hearing held on February 1, 2018. The tenants moved out on September 15, 2018. The landlord still holds the security deposit in the amount of \$550.00.

The landlord is seeking compensation for one month's rent in the amount of \$746.95 as the tenants failed to move out in a manner compliant with the Act. The landlord testified that they suffered a monetary loss as the tenants did not give notice until September 11, 2018.

The tenants do not dispute that they failed to give proper notice under the Act, but only did so because they feared for their lives. The tenants testified that they felt their lives were in danger, and that is why they moved out with such little notice. The tenants do not dispute that they did not give proper notice, but feel that they only owe the landlord one day's rent for over holding.

Analysis

Section 45 of the *Residential Tenancy Act* reads in part as follows:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the tenants did not end this tenancy in a manner that complies with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this tenancy. The evidence is clear that the tenants did not comply with the *Act* in ending this periodic tenancy as they failed to give proper notice required by section 45(1) of the *Act*. I, therefore, find that the tenants vacated the rental unit contrary to section 45 of the *Act*.

I am satisfied that the landlord's monetary claim for one month's rent is reasonable and that they mitigated the tenants' exposure to their losses. I allow the landlord's monetary claim for one month's rent.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenants' security deposit of \$350.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in satisfaction of the monetary claim.

Conclusion

The landlord withdrew their monetary claim for \$15,000.00 at this time.

I issue a Monetary Order in the amount of \$496.95 in the landlord's favour as set out in the table below. I allow the landlord to retain the tenants' security deposit in satisfaction of their monetary claim.

Monetary Claim for Lost Rental Income due to tenants' failure to comply with sections 44 and 45 of the <i>Act</i>	\$746.95
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Half of Filing Fee	100.00
Less Security Deposit	-350.00
Total Monetary Award	\$496.95

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) 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: March 11, 2019

Residential Tenancy Branch