



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR; MT, CNC, CNR, DRI, LRE, MNRT, MNDCT, OLC, OPT, PSF, RR, FFT

### Introduction

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

- an order of possession for unpaid rent, pursuant to section 55.

This hearing dealt with the tenants' cross-application pursuant to the *Act* for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause, dated February 11, 2019 ("1 Month Notice"), pursuant to section 66;
- cancellation of the landlord's 1 Month Notice, pursuant to section 47;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 4, 2019 ("10 Day Notice"), pursuant to section 46;
- an order regarding a disputed additional rent increase, pursuant to section 43;
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70;
- a monetary order for the cost of emergency repairs and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order of possession to the rental unit, pursuant to section 54;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and the two tenants, “female tenant” and male tenant (“tenant”) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The female tenant confirmed that the tenant had permission to represent her at this hearing. This hearing lasted approximately 64 minutes.

Both parties confirmed receipt of the other party’s application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party’s application.

The landlord stated that he did not receive the tenants’ evidence package, consisting of photographs and text messages. The tenant said that it was served to the landlord with the original application and notice of hearing, which was received by the landlord, by registered mail. He said that both he and the female tenant were present when the documents were mailed out. The landlord said that he had copies of text messages from the tenancy but he did not know which ones the tenants provided. In accordance with sections 88 and 90 of the *Act*, I find that the landlord was deemed served with the tenants’ evidence package along with the original application and I considered them in this decision. The landlord was a party to the text messages, he had a number of text messages from earlier in the tenancy, and the tenants were both present when the service happened.

The tenants said that they moved out of the rental unit and they were no longer pursuing their application, except for the monetary orders. The landlord said that he was not pursuing his application for an order of possession. Accordingly, these portions of both parties’ applications are dismissed without leave to reapply.

### Issues to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to recover the filing fee for their application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced

here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. Monthly rent in the amount of \$1,100.00 was payable on the first day of each month. No security deposit was paid by the tenants to the landlord. No written tenancy agreement was signed by the parties. The rental unit was the basement of a house, where the landlord occupied the upper part of the house.

The tenant stated that he moved in around September 2012, while the landlord believed it was around December 2011 but he could not recall. The landlord said that the tenants vacated the rental unit on April 1, 2019, while the tenant claimed that all of the tenants' belongings were out of the rental unit by April 12, 2019.

The tenants seek a monetary order for \$35,000.00. The tenant testified that there was mold in the rental unit, there was exposed drywall, and he provided photographs of same. He maintained that he has three children and they fell sick because of the mold. He said that his daughter was hospitalized numerous times. He claimed that he could not have professional people from his work, visit him at the rental unit. He said that his wife lost twelve pounds and could not do physical work. He stated that the landlord harassed the tenants and called the police for noise complaints such as when his daughter was having fun in the bathtub. He maintained that the tenants were forced to move out, the landlord turned off the heat, the tenants' children missed school, and they had to move to a different school district. The tenant explained that the tenants now pay a higher rent of \$2,400.00 per month plus about \$400.00 more in utilities.

The landlord disputes the tenants' entire application. He said that he did not harass the tenants, he would never turn off the heat when the tenants have children, especially because he has his own children living at the same property. He said that the tenants came up with the number of \$35,000.00 without being able to justify it. He claimed that he remained professional in all of his text message conversations with the tenants. He said that he called the RTB in order to get advice about the tenancy and the tenants' rights. He said that the tenants did not pay for the last four months of rent, their rent was rarely on time during the tenancy, and he issued the 1 Month Notice because of the repeated late rent. He stated that he did not force the tenants to move out. He explained that he had a cordial relationship with the tenants, everything was done with a "handshake" and he never filed an application against them for the unpaid rent or the fact that they did not leave the rental unit by March 31, 2019.

## Analysis

During the hearing, the tenants spoke for longer than the landlord, at approximately 45 minutes. The tenant was talking to his wife in the background and yelling at her to “calm down.” He said that because neither I nor a bailiff was present, we could not help to calm his wife down. The tenant did not go through his evidence with me during the hearing, he could not find his evidence online in the appropriate areas to direct me to consider it, and he logged onto his computer during the hearing attempting to find his evidence. The tenants’ evidence was confusing, as they did not provide a table of contents or number their evidence pages. The tenant became upset when I asked him to direct me to his evidence and tell me how it was relevant to the tenants’ claim. In any event, I find that the tenants’ text messages and photographs were not helpful to the tenants’ claim for compensation, as they did not provide receipts, invoices, estimates, medical documentation, or other such records to prove their claims.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the tenants 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.

On a balance of probabilities and for the reasons stated below, I dismiss the tenants’ entire application of \$35,000.00 without leave to reapply. I find that the tenants are not entitled to \$15,000.00 for the stress of their children or \$20,000.00 for the additional \$2,000.00 per month of additional rent over the next year.

I find that the tenants voluntarily vacated the rental unit. The tenants did not prove that they were forced to move. They received a 10 Day Notice and a 1 Month Notice and disputed both, but chose not to wait for this hearing before they moved out. The fact that the tenants chose to leave when they did, was up to them. The tenants did not provide any police reports indicating that they were being forced to move or being harassed by the landlord during the tenancy. They did not file any RTB applications

indicating that the landlord had shut their heat off and for the heat to be restored during their tenancy.

The additional rent of \$2,000.00 per month over a period of 12 months adds up to \$24,000.00 not \$20,000.00. Further, the tenants did not provide a copy of their new tenancy agreement, rent receipts, cancelled rent cheques, bank documents or other such documentarian to show where they are living, how much they are paying for rent, and that they have paid this rent to a new landlord. In any event, I find that they moved on their own accord, as noted above, so they are not entitled to this compensation.

The tenants failed to provide sufficient evidence that their children suffered from stress or medical illnesses as a result of the landlord's behaviour. They failed to provide medical documentation including medical clinical records, medical reports, prescriptions, receipts for medical treatments, or other such documentation to prove their claim. They failed to provide mold reports showing that the mold level was at a medically dangerous level, due to the landlord's failure to address the issue. Further, as noted above, I find that the tenants moved from the rental unit, of their own volition.

As the tenants were unsuccessful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

The landlord's application is dismissed without leave to reapply.

The tenants' entire 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: April 16, 2019

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Residential Tenancy Branch