



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDCT, OLC, OPT, FFT  
MNDCL-S, MNDL-S, MNRL-S, FFL

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”). The matter was set for a conference call.

The Tenants’ Application for Dispute Resolution was made on March 15, 2019. The Tenants applied to cancel the 10-Day Notice to End Tenancy for Unpaid Rent, issued March 5, 2019, for an order of possession of the rental unit, for an order for the Landlord to comply with the *Act*, for a monetary order for compensation, and the return of their filing fee. The Landlords’ Application for Dispute Resolution was made on March 21, 2019. The Landlords applied for a monetary order for damages and losses due to the tenancy, a monetary order for unpaid rent, permission to retain the security deposit and to recover their filing fee.

Both the Landlords and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Landlords were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary matter

At the outset of the hearing, both parties agreed that the Tenants had moved out of the rental unit, as of March 31, 2019.

The Tenants testified that they no longer wished to cancel the 10-Day Notice to end tenancy and that they were withdrawing their claims for an order of possession of the rental unit, and for an order for the Landlord to comply with the Act.

The Landlord did not dispute the Tenants request.

In regard to the Tenants' application, I will proceed on the remain two matters, of a monetary order for compensation and the recovery of the filing fee.

Additionally, during the hearing, the Landlords withdrew their claim for compensation for the replacement cost for a door frame in the rental unit. The Tenants disputed the Landlords request, stating if the Landlord was not prepared to proceed on that part of his claim it should be dismissed not withdrawn. I have considered both the Landlords' request to withdraw, and the Tenants dispute of that request.

I find it is appropriate to grant the Landlords' request to withdraw his claim for compensation for the replacement cost for a door frame in the rental unit.

#### Issues to be Decided

- Are the Landlords entitled to monetary compensation for damages under the *Act*?
- Are the Landlords entitled to monetary compensation for losses under the *Act*?
- Are the Landlords entitled to monetary order for unpaid rent?
- Are the Landlords entitled to retain the security deposit for this tenancy?
- Are the Landlords entitled to recover the cost of the filing fee?
- are the Tenants entitled to monetary compensation under the *Act*?
- Are the Tenants entitled to recover the cost of the filing fee?

#### Background and Evidence

Both parties testified that the tenancy began on April 1, 2016, as a month-to-month tenancy agreement. Rent in the amount of \$1,100.00 was to be paid by the first day of each month and at the outset of the tenancy, the Tenants paid a \$500.00 security deposit and a \$150.00 pet damage deposit. The Tenants provided a copy of the tenancy agreement into documentary evidence.

Both parties agreed that, on December 30, 2018, the Landlords issued a typed letter to Tenants, stating that the Landlords planned on having their son move into the rental unit and that they need the Tenants to move out as of March 31, 2019. The Tenants submitted a copy of the letter into documentary evidence.

When asked, both parties agreed that the Residential Tenancy Branch form #RTB-32 "Two Month Notice to End Tenancy for Landlord's Use of Property" had not been issued by the Landlords.

Tenant R.W. testified that they believed that the Landlords' typed letter had been an official notice to end his tenancy under section 49 of the *Act* and that due to that notice he was entitled to one-months rent as compensation. R.W. testified that due to getting the letter, ending his tenancy, from the Landlord he withheld his portion of the last month's rent, for March 2019, as payment of the compensation due to him.

Tenant D.W. testified that he paid his portion of the March 2019 rent but that he also believes that the Landlords had issued a notice to end the tenancy and that the Landlords owe him a month rent as compensation. The Tenant D.W. testified that he is claiming for \$550.00 for the compensation due to him under the *Act*.

The Landlords testified that when they received only half of the March 2019 rent payment, they issued a 10-Day Notice to End Tenancy for Unpaid Rent, on March 5, 2019.

The Landlords testified that they had asked the Tenants to leave, on December 30, 2018, but that they had not issued a legal notice to end the tenancy on that date. The Landlord testified that no compensation is due to the Tenants and that the full rent for March 2019, should have been paid for this tenancy.

Both the Landlords and the Tenants agreed that the Tenants had moved out of the rental unit as of March 31, 2019, and that the Landlords had possession of the property as of April 1, 2019. Both parties also agreed that the move-in/move-out inspections had not been completed for this tenancy.

The Landlords testified that the Tenants had returned the rental unit to them uncleaned and damaged at the end of the tenancy. The Landlords testified that it took them seven hours for them to clean and complete repairs to the rental unit after the Tenants had moved out. The Landlords are requesting \$450.00 in compensation for their time to clean and repair the rental unit. The Landlord submitted 16 photographs of the rental unit into documentary evidence.

The Tenants testified that they had cleaned the rental unit at the end of tenancy, that they had not damaged the rental unit and that they had returned the rental unit to the Landlord in the same condition in which they had received it at the beginning of the tenancy.

The Landlords testified that the Tenants had also left garbage and personal possession in the rental at the end of the tenancy. The Landlords testified that it took them two hours to remove and dispose of all of the garbage and personal possession from the rental unit. The Landlords are requesting to be compensated \$50.00 in labour and for the recovery of the dumping charge of \$50.00

The Tenants agreed that they had left some personal possession in the rental unit at the end of the tenancy and they agreed that they owe the Landlord the \$50.00 dumping fee and for his labour costs. However; the Tenants disagreed that it would have taken the Landlord two hours to remove what they had left behind and felt it should have only taken the Landlord and hour.

### Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenants have claimed for compensation pursuant to section 51 of the *Act*; the *Act* states that a tenant who received a notice to end tenancy under section 49 of the act is entitled to the equivalent of one month's rent as compensation.

#### **Tenant's compensation: section 49 notice**

**51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or

before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

In order to confirm if the Tenants are entitled to compensation under section 51 of the *Act*, I must first determine if the Landlords issued a notice pursuant to section 49 of the *Act*. Section 49(7) of the *Act* states that a notice issued under this section must comply with the “form and content of a notice to end tenancy” as set out in section 52 of the *Act*, which states the following:

***Form and content of notice to end tenancy***

***52*** *In order to be effective, a notice to end a tenancy must be in writing and must*

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
- (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
- (e) when given by a landlord, be in the approved form.*

I have reviewed the “notice,” submitted into evidence, that Tenants claim is the notice to end their tenancy. I noted that the “notice” is a typed letter from the Landlords to the Tenants asking them to leave. Section 52(e) of the *Act* requires that a notice issued by a landlord, to end a tenancy, must be on the approved form. In this case, that approved form would have been the Residential Tenancy Branch form #RTB-32 Two Month Notice to End Tenancy for Landlord’s Use of Property.

I accept the testimony for both parties that the Landlords did not issue the Residential Tenancy Branch form #RTB-32 Two Month Notice to End Tenancy for Landlord’s Use of Property, to the Tenants. As the Landlords did not issue form #RTB-32 Two Month Notice to End Tenancy for Landlord’s Use of Property, I find that the Landlords had not issued a legal notice to end this tenancy pursuant to section 49 of the *Act*.

Consequently, as the Landlords had not issued a legal notice to end the tenancy on the approved form, I find that no compensation is due to the Tenants. Therefore, and I dismiss the Tenants’ claim for compensation under the *Act*.

As for the Landlords claim for unpaid rent for March 2019, I acknowledge that the Tenants believed that they had been given notice to end their tenancy and were due compensation due to that belief and that they had withheld a portion of rent due to that belief. However, as I have already found that the Landlords had not issued a proper notice pursuant to section 49 of the *Act* and that compensation was due to the Tenants, I find that the Tenants were in breach of section 26 of the *Act* when they withheld \$550.00 from their March 2019 rent payment. Therefore, I grant the Landlord a monetary award of **\$550.00** for the unpaid portion of the March 2019 rent for this tenancy.

I accept the testimony of both parties that this tenancy ended on Mach 31, 2019, the date the Tenants moved out. I also accept the testimony of both parties that the Landlord did not conduct the move-in or move-out inspection for this tenancy.

Pursuant to section 23 and 35 of the *Act*, it is the responsibility of the Landlord to ensure that the inspections for a tenancy are completed as required. I find that the Landlord was in breach of sections 23 and 35 of the *Act* by not completing the inspections as required.

The move-in/move-out inspection is an official document that represents the condition of the rental unit at the beginning and the end of a tenancy, and it is required that this document is completed in the presence of both parties. In the absence of that document, I must rely on verbal testimony regarding the condition of the rental unit at the beginning and the end of the tenancy.

As for the Landlords' claim for \$450.00 as compensation for their labour to clean and repair the rental unit at the end of the tenancy. In the absence of a move-in/move-out inspection, I must rely on the testimony of the parties to determine the condition of the rental unit at the beginning and end of the tenancy. In this case, I find that the parties offered conflicting verbal testimony regarding the condition of the rental unit at the beginning and end of this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I have reviewed the additional documentary evidence submitted into evidence by the Landlord, and I find that there is insufficient evidence before me to prove the Landlords'

claim. Therefore, I dismiss the Landlords' claim for the compensation for cleaning the rental unit at the end of the tenancy.

Regarding the Landlords claim for removal of personal property and garbage, I accept the agreed upon the testimony of both parties that the Tenants owes the Landlord for the removal of personal property and garbage left in the rental unit at the end of the tenancy. I find the requested cost of \$50.00 for the dumping fee and \$50.00 for the Landlords labour cost to be a reasonable representation of the Landlords losses and costs for dealing with the Tenants garbage and personal property at the end of this tenancy. Therefore, I grant the Landlord the requested amount of **\$100.00** in compensation for the removal of garbage and personal property left behind by the Tenants at the end of this tenancy.

I accept the testimony of these parties that the Landlords are holding a \$650.00 in deposits for this tenancy; consisting of \$500.00 security deposit and a \$150.00 pet damage deposit.

Overall, I have awarded the Landlord \$650.00; comprised of \$550.00 in unpaid rent and \$100.00 for the removal of personal property and garbage. I grant the Landlords permission to retain the security and pet damage deposits for this tenancy in full satisfaction of the award contained in this decision.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been unsuccessful in their application, I find that they are not entitled to the return of their filing fee. Although I find that the Landlords have been partially successful in their application, I find that they have also breached the *Act* during this tenancy and are therefore also not entitled to recover the \$100.00 filing fee paid for their application.

### Conclusion

The Tenants' application is dismissed, without leave to reapply.

I grant permission to the Landlords to retain the security and pet damage deposits for this tenancy in full satisfaction of the above award.

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: May 15, 2019

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Residential Tenancy Branch