



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL REAL ESTATE SERVICES LTD. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFT MNDCT

### Introduction

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the "Act") for a monetary award for damages and loss and an order to recover the filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlords were represented by their agent (the "landlord").

As both parties were present service was confirmed. The parties each confirmed receipt of the other's materials. While the parties mentioned that some items were received outside of deadlines set in the Rules of Procedure, I find that each party had an opportunity to review the materials and there is no prejudice to either party with the inclusion of materials. Based on the testimonies I find that each party was sufficiently served with the respective materials in accordance with sections 71, 88 and 89 of the *Act*.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

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

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

I note that both parties have uploaded numerous pieces of individual evidence in separate files in a haphazard and unorganized manner. Residential Tenancy Policy Rule of Procedure 3.7 provides that evidence submitted by a party must be organized, clear and legible. The parties filed many individual files instead of a single pdf file with numbered pages, the file names are inconsistent and unclear as to their contents so that it is difficult to locate specific information. Files are uploaded non-sequentially in no discernable order so that locating individual pieces of evidence is difficult and time consuming. While I have not excluded any of the documentary evidence of either party, I find that the poor presentation detrimentally affects the strength of submissions and the parties are advised to submit all evidence in a single numbered pdf file containing only relevant materials.

This tenancy began in March, 2017 and ended on December 31, 2018. The monthly rent was \$2,756.00 payable on the first of each month. There was a previous hearing under the file number on the first page of this decision where the tenants were issued a monetary award for loss of value of the tenancy agreement .

The tenants gave notice on December 27, 2018 to vacate the rental unit on December 31, 2018. The landlord consented to the end of tenancy. No written Notice to End Tenancy was ever issued by the landlord. The tenants submit that they felt pressured to end this tenancy due to the condition of the suite and the landlord's failure to perform repairs.

The tenants now seek a monetary award in an amount equivalent to 12 months rent payable pursuant to section 51 of the Act. The tenants also seek costs for moving, lost wages and an award for aggravated damages.

### 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.

Section 51 of the *Act* provides that:

- (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.
- ...
- (2) ... in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if
  - (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
  - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

In the present circumstance no Notice to End Tenancy under section 49 was ever issued. As such, there is no basis for a monetary award pursuant to section 51 and accordingly I dismiss this portion of the tenants' application.

I find that the tenants have not shown that the costs for lost wages and moving are losses attributable to any violation on the part of the landlord. This tenancy ended by way of the tenant's notice. While the tenants submit that they felt pushed out of the tenancy due to the ongoing issues, I find there is insufficient that the landlord's conduct amounts to a constructive notice to end tenancy. I find that the correspondence from the landlord are not a valid notice to end tenancy and there was no obligation on the tenants to end the tenancy. The tenants gave the notice to end the tenancy by email on December 27, 2018. I find that there is no violation of the Act, regulations or tenancy agreement on the part of the landlord that would give rise to a monetary award.

The tenants also seek aggravated damages in the amount of \$539.34. In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's behaviour. The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.

They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought.

I find that there is insufficient evidence in support of the tenant's claim for aggravated damages. Based on the evidentiary materials I find that the landlord's conduct was not highhanded nor of a deliberate nature that warrants a damage award beyond one set out in statute. I find that the tenants' submissions on this point are insufficient to show that there is an evidentiary basis that would give rise to an extraordinary measure such as aggravated damages. Consequently, I dismiss this portion of the tenants' application.

As the tenants' application was unsuccessful the tenants are not entitled to recover their filing fees.

### Conclusion

The tenants' application is dismissed in its entirety 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: December 20, 2019

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Residential Tenancy Branch