



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDCT, FFT

### Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause (the "One Month Notice"), pursuant to section 47;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlords and tenant P.P. (the "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.

Both parties agree that the tenant personally served the landlords with her application for dispute resolution and her amendment on October 3, 2019. I find that the tenants' application for dispute resolution and amendment were served on the landlords in accordance with sections 88 and 89 of the *Act*.

### *Preliminary Issue- Application to Cancel the One Month Notice*

Both parties agree that the tenant moved out of the subject rental property on November 1, 2019. The tenant's application to cancel the One Month Notice is therefore dismissed as the tenancy had already ended.

### Issues to be Decided

1. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 28, 2019 and ended on November 1, 2019. Monthly rent in the amount of \$1,850.00 was payable on the first day of each month. The tenant was also responsible for paying 40% of the hydro bill. A security deposit of \$900.00 and a pet damage deposit of \$350.00 were paid by the tenants to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The subject rental house has an upper and lower suite. The tenants resided in the upper suite.

The tenant testified that she is seeking a monetary award for moving expenses and for wrongful eviction. I asked the tenant to explain her monetary claim and to tell me what amount of money she was seeking for each item listed on the monetary claim worksheet entered into evidence. The tenant testified that she did not have the monetary claim worksheet in from of her and could not tell me what her monetary claim was comprised of. No receipts in support of the monetary claims made on the monetary worksheet were entered into evidence.

The tenant testified that she is seeking a monetary award for wrongful eviction; however, she did not state what amount of money she was seeking. The tenant testified that she moved out of the subject rental property in accordance with the One Month Notice issued by the landlord because she did not feel safe. The tenant testified that landlord O.M. only posted notices on her door when she was not home so that meant that the landlord must have been watching her. The tenant testified that landlord O.M. was creepy. The tenant testified that landlord O.M. would look into her yard and ask her to pick items up and that she felt like she was always being watched.

The tenant testified that the rental property was not properly sound proofed between the upper and lower suite and that the landlord knew this and did not fix the problem before they moved in. The tenant testified that she was wrongfully evicted because of the normal noise her children made in the subject rental property.

The landlords testified that they live across the street and so see the subject rental on a daily basis. The landlords testified that they are not stopping by the subject rental property all the time but have addressed issues with the tenancy which they have noticed due to the proximity of the houses. Landlord O.M. testified that he has only knocked on the door on one occasion and has otherwise had other people post notices and letters on the tenants' door, in accordance with the *Act*, as he is aware that the tenants did not want personal contact with him.

Landlord O.M. disputed ending the tenancy improperly and only issued the One Month Notice after he received numerous noise complaints from the lower tenant. The landlords testified that they are not responsible for the tenant's monetary claim for moving expenses as the One Month Notice was properly issued.

The One Month Notice entered into evidence states that it was posted on the tenants' door on September 18, 2019 and has an effective date of October 31, 2019.

### Analysis

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find that while the tenants initially disputed the One Month Notice, they subsequently chose to move out of the subject rental property in accordance with the One Month Notice. As the tenants elected to comply with the One Month Notice, rather than

dispute it, I find that they are not entitled to a monetary award for wrongful eviction as the tenants willingly moved out and ended the tenancy.

I also find that the landlord did not breach the *Act* by posting notices/ letters on the tenants' door as posting is an approved method of service under section 88 of the *Act*. I find that the tenant has not proved that the landlord's conduct has breached any section of the *Act*.

Pursuant to section 67 of the *Act* and Residential Tenancy Policy Guideline #16, in order to be successful in a monetary claim for damages the tenant must prove the amount of or value of the damage or loss suffered. I find that the tenants have not provided any evidence, other than the tenant's testimony, which establishes the value of loss suffered as no receipts or estimates were entered into evidence.

The tenant testified that she suffered moving expenses but no proof of the expenses were provided, nor were any details of the what she was claiming. The tenant also provided no explanation as to what amount of money she was claiming for wrongful eviction or how that amount was arrived at. I dismiss the tenants' entire claim as they have not proved the amount or value of the damage or loss suffered.

As the tenants were not successful in their application, I find that they are not entitled to recover the \$100.00 filing fee, pursuant to section 72 of the *Act*.

### Conclusion

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: December 09, 2019

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Residential Tenancy Branch