



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNSD, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for damage or compensation under the Act in the amount of \$31,563.00, and a monetary order for the return of double the security deposit in the amount of \$3,000.00, and to recover the \$100.00 cost of their Application filing fee.

The Tenants, F.H. and S.A., and the Landlord, S.F., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

This matter was heard by another RTB arbitrator on September 27, 2019; however, the Landlords applied for a review of that decision, because they had not attended the original hearing to present their position on the Tenants' application. A new hearing was ordered to consider this Application.

Issue(s) to be Decided

- Are the Tenants entitled to a monetary order, and if so, in what amount?
- Are the Tenants entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on June 1, 2018, and was to run to May 31, 2019 and then run on a month-to-month basis. The Parties agreed that the Tenants paid the Landlords a monthly rent of \$3,000.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlords a security deposit of \$1,500.00, and no pet damage deposit.

*Compensation Claim for 12 Months' Rent*

The Parties agreed that the end of the tenancy started when the Landlords served the Tenants with a Two Month Notice to End a Tenancy for Landlord's Use, signed and dated March 31, 2019 ("Two Month Notice"). The Two Month Notice contained the rental unit address, was served in person on March 31, 2019, and had an effective vacancy date of May 31, 2019. The ground for the eviction listed on the Two Month Notice was that "the rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)".

The Landlord said that her daughter was going to move into the rental unit, which led them to issue the Two Month Notice; however, the Landlord said her daughter changed her mind and "a week later we gave [the Tenants] a letter cancelling the Two Month Notice on April 7, 2019." In a written submission, the Landlords said:

One week later a Notice was hand delivered by [S. and S.F.] to the Tenants **Cancelling** the 2 Month Notice to end Tenancy because [Landlord's daughter] had an apartment downtown offered to her, that she had previously looked at, and she wanted to move into it instead of our house. This letter stated the Tenant was welcome to stay in the residence as set out in the Lease if they would like to. If not, please give us one month written notice to end your tenancy.

[F.H.] received this cancellation notice in person, reads it and asked me 'if I would still be keeping the house listed For Sale?' When I replied 'Yes', he said 'if

that is the case then we will be moving out'. He also said he would expect us to honour the month of free rent he is entitled to for May' – which we ultimately ended up

. . .

I hand deliver a second letter to [F.H.], again cancelling the 2 month notice effective immediately. This letter was amended so as not to mention my daughter because the tenant was trying to not accept the 2 month cancel notice delivered to him on April 7<sup>th</sup> based on this fact. He confirms again he will be moving out at the end of May.

The tenant claims he only received this cancel notice dated April 18 after he had already found a place on April 16. He only brings up this fact that he received it because he rightly thinks it is one of the two reasons we asked for a review consideration.

**The tenant had failed to include this important document in his *original* hearing package because as you can see from his Monetary Worksheet it has not been mentioned nor included and was also never mentioned to the Arbitrator in his Decision dated October 9<sup>th</sup>.**

[reproduced as written (emphasis in original)]

The Landlords submitted a copy of a letter dated April 7, 2019, that they said they delivered in person to the Tenants on April 7, 2019.

In the hearing, the Tenant, F.H., said that he believes that the purpose of the end of the tenancy was not done in good faith. He said:

On March 31, the Landlord delivered the [Two Month Notice]. Two days later, we received three more notices for showing the house to prospective buyers. This was not the purpose of the notice.

We believe that the showings were arranged after the Two Month Notice was given, and after the showings we called the RTB and told them about the Two Month Notice for Landlords' own use, but that they are still arranging for showings. The RTB said the end of tenancy notice was not given in good faith. I asked if we block the Landlord from bringing more buyers and was told, 'No, let

them in, but after you move out you can apply for dispute resolution, because the Two Month Notice was not done in good faith’.

The Landlord said that the Tenants failed to include copies of these notices cancelling the Two Month Notice, which is why he was successful in the first hearing.

The Tenant denied that he received the first notice cancelling the Two Month Notice and he said that he was not home on the day and time that the Landlord alleges that she served him with this April 7, 2019 notice in person. The Tenant said he called the RTB to ask if a Landlord can cancel a Two Month Notice, and he said he was told that a landlord cannot do this.

#### Return of Security Deposit

The Parties agreed that the last day of the tenancy was May 31, 2019, which was also the day on which they conducted the move-out inspection of the condition of the rental unit, including filling out a condition inspection report (“CIR”). They agreed that the Tenants provided the Landlords with their forwarding address in writing on the CIR on May 31, 2019.

The Tenant said he took a photograph of the CIR at the end of the inspection. He said he never received a cheque for the security deposit he paid the Landlords. He said he sent both Landlords text messages asking about it, but received no response from them. As a result, the Tenant said he applied for dispute resolution to get it back.

The Landlord said that on June 9, 2019, she mailed the Tenants a copy of the CIR and a cheque with the full \$1,500.00 security deposit included. She said she remembered that it was sent on June 9, because that was also her daughter’s birthday, and she remembers having mailed the cheque on the same day as the birthday.

The Landlord said she did not send the cheque and CIR via registered mail, but the envelope did not come back to her labelled “undelivered”, and she said the cheque was never cashed. The Landlord submitted a copy of email transactions with the Tenant starting on July 3, 2019, in which the Landlord responds to an email from the Tenant asking about the return of the security deposit. The Landlord responded, saying she was on vacation at the time, but noting that the cheque was mailed to the forwarding address supplied by the Tenant. The Landlord said she would have her daughter check to see if the cheque was returned as undelivered. The Landlord offered to stop the

payment on the first cheque, if it had not cleared, and send the Tenants the security deposit via etransfer.

On July 4, 2019, the Tenant responded to the Landlord's email of July 3, 2019, saying he wanted the Canada Post tracking information, so that he could follow up with Canada Post. The Landlord responded that day saying that the cheque had not been returned to them and that it had been sent via regular mail, not trackable registered mail. The Landlord asked for the Tenants' address again and said she would send a new cheque by express post the next week.

The Landlord questioned how the Tenants were able to submit a copy of the move-out CIR in dispute resolution, if they had not received it in the mail with the original security deposit cheque. She said the copy submitted was not a photograph from a cell phone, but a copy of the original CIR.

The Tenant said that he has an application on his cell phone with which you can convert pictures to Adobe files, which is what he said he did in this case. The Landlord said that his document #2 is a mutual agreement between the Parties, which includes a reconciliation of utilities bills and garden clean up. She said this submission is definitely a photograph of the document. She questioned why he would not use the cell phone application to turn that into an Adobe file for submission, as well, if that is what he did with the CIR.

The Landlord pointed to another piece of the Tenants' evidence, which the Landlords included at page ten of their submissions. This Landlords' evidence is a copy of the first page of the Tenants' monetary order worksheet. The Landlord pointed out that the Tenants had clearly put an "X" beside "move-out inspection report", as evidence being submitted to support their claim. However, this X had been removed at some point by someone. The Landlord suggested that the Tenant changed his mind about including this, because it would better reflect his version of events of not having received the move-out CIR.

The Tenant said:

I attached the move-out CIR because it was provided by me, not the Landlord. I thought maybe it was not my responsibility to attach it. I decided to attach it, but I didn't know if it could be evidence or not. That's why. As for the settlement we signed, that's clearly a picture from my old phone and I didn't have the [application] yet, so that's why the quality of it is different from the CIR.

The Landlord said that the Tenants live in the same community as the Landlords, therefore, it is more likely than not that they would have received the mailed package including the CIR and the security deposit cheque.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

#### Compensation Claim for 12 Months' Rent

The Tenants acknowledged that he called the RTB to ask if the Landlord can cancel a Two Month Notice. This raises questions in my mind as to why the Tenant would have done this, if he had not received the Landlords' notice cancelling the Two Month Notice. I also question why the Tenants did not raise this as an issue with the original arbitrator in the first hearing on September 27, 2019, if they had been told by the RTB that a Landlord cannot cancel a Two Month Notice.

When I consider all the evidence before me, overall, I find that the Two Month Notice was, in fact, cancelled by the Landlords, which I find they were at liberty to do. I further find that the Tenants were given the opportunity to continue renting the rental unit from the Landlords. Therefore, I find what the Landlords did with the property after the end of the tenancy is irrelevant, and that the Tenants do not have a right to compensation pursuant to section 51 of the Act.

I dismiss this claim without leave to reapply.

#### Return of Double the Security Deposit

I find that the Tenants provided their forwarding address to the Landlord on May 31, 2019, and that the tenancy ended on May 31, 2019. Section 38(1) of the Act states the following about the connection of these dates to a landlord's requirements surrounding the return of the security deposit:

**38 (1)** Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlord was required to return the \$1,500.00 security deposit within fifteen days of May 31, 2019, namely by June 15, 2019, or to apply for dispute resolution to claim against the security deposit, pursuant to Section 38(1). The Landlords provided evidence that they mailed the Tenants a cheque with the security deposit on June 9, 2019, which is deemed delivered to the Tenants on June 14, 2019, pursuant to section 90 of the Act. There is no evidence before me that the Landlords applied to the RTB for dispute resolution, claiming against the security deposit.

Section 38(6)(b) states that if a landlord does not comply with section 38(1) that the landlord must pay the tenant double the amount of the security deposit. There is no interest payable on the security deposit.

After reviewing all the evidence before me on this matter, I find on a balance of probabilities that the Tenants have not provided sufficient evidence to support their claim. I find the Landlords' evidence to be more detailed, internally consistent and externally consistent with other evidence; therefore, I find the Landlords' version of events more reliable than that of the Tenants in this matter. I find it is more likely than not that the Landlords sent the Tenants a cheque for the security deposit on June 9, 2019, with a copy of the CIR, and that the Tenants denied having received this package. I, therefore, find that the Landlords complied with their requirements under section 38(1) of the Act, and I dismiss the Tenants' Application for the return of double the security deposit.

If not done so already, I direct the Landlords to cancel the original security deposit cheque they sent to the Tenants, and to issue the Tenants a new one in the amount of \$1,500.00, and send it to them by registered mail by January 6, 2020.

As the Tenants were unsuccessful in their Application, I decline to award them recovery of the \$100.00 Application filing fee.

Conclusion

The Tenants were unsuccessful in their Application, as I found their evidence to be unreliable and insufficient to meet their burden of proof on a balance of probabilities. The Tenants' Application is dismissed in full.

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 31, 2019

---

Residential Tenancy Branch