



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Rayn Properties Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution, notice of hearing and all evidence (the “Materials”) by registered mail on September 18, 2019 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Landlord is deemed to have received the Materials on September 23, 2019. The Tenant was given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

The Tenant states that a previous hearing on this matter was held and resulted in a decision and monetary order dated May 10, 2019 (the “Decision and Order”), referenced on the cover page of this decision. The Tenant states that the party named in the application that resulted in the Decision and Order was not the Landlord as named in the tenancy agreement. The Tenant states that as a result the Tenant was unable to enforce the monetary order at small claims court. The Tenant states that this

current application sets out the correct name for the Landlord but adds that a period was omitted in error at the end of the Landlord's name. The Tenant seeks to amend the application to include the missing period as set out in the tenancy agreement provided as evidence for this hearing.

Rule 4.2 of the Residential Tenancy Branch (the "RTB") Rule of Procedure provides that in circumstances that can be reasonably anticipated the application may be amended at the hearing. Given the minor error contained in the Landlord's name set out in the current application and considering the copy of the tenancy agreement setting out the Landlord's name including a period and given the circumstances with enforcement, I find that the Tenants' application may be amended to add a period after the Landlord's name.

Section 77(3) of the Act provides that a decision or an order of the director is final and binding on the parties. As the party named as landlord in the Decision and Order is not the same Party named as Landlord in the Tenant's current application, I consider that the Decision and Order is not binding on the currently named Landlord. I find therefore that I am not stopped from determining the Tenants' claims in the current application.

#### Issue(s) to be Decided

Are the Tenants entitled to the monetary amounts claimed?

#### Background and Evidence

The tenancy began on November 1, 2015. During the tenancy rent of \$1,500.00 was payable on the first day of each month. On August 27, 2018 the Tenant was given a 4-month notice to end the tenancy for landlord's use (the "Notice"). Two reasons are stated on the Notice: the landlord is going to demolish the unit and the landlord is going to perform renovations and repairs that are so extensive that the rental unit must be vacant. The Notice sets out an effective date of December 31, 2018. The Tenants moved out of the unit on September 30, 2018.

As of September 18, 2018, the unit was listed for sale. After the end of the tenancy no extensive renovations were done and as of November 1, 2018 new tenants moved into the unit. The new tenants are known to the Tenant's family. The unit was then sold on March 5, 2019 with occupancy by the owner on May 15, 2019. The Tenants claim \$1,500.00 x 12 months: \$18,000.00.

### Analysis

Section 51(2) of the Act provides that subject to subsection (3), the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
- (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Section 51(3) provides that the landlord may be excused from paying the above amount if, extenuating circumstances prevented the landlord from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
- (b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Based on the undisputed evidence that no extensive renovations were done to the unit, that the Landlord did not demolish the unit and that the unit was sold prior to six months from the effective date of the Notice, I find that the Landlord did not use the rental unit for the purpose stated on the Notice for at least 6 months after the effective date of the Notice. As there is no evidence of any extenuating circumstances that prevented the Landlord from using the unit for the stated purpose, I find that the Tenant has substantiated that the Landlord must now pay the Tenant **\$18,000.00**. As the Tenants

have been successful with their claim, I find that the Tenants are also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$18,100.00**.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$18,100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: January 10, 2020

---

Residential Tenancy Branch