



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT FFL

### Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for a monetary order in the amount of \$84,864.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenants, the landlord, an agent for the landlord DD (agent), the daughter/translator for the landlord YZ (translator), and the husband of the landlord YZ (husband) attended the teleconference hearing, which began on November 1, 2019. The parties gave affirmed testimony, were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. Only the evidence relevant to my decision has been included below. After 43 minutes, the hearing was adjourned to allow additional time to hear evidence from the parties, and to hear from the landlord's witness, NF. An Interim Decision was issued dated November 4, 2019, which should be read in conjunction with this decision. On January 17, 2020, the hearing reconvened and after an additional 52 minutes, the hearing concluded.

At the start of the hearing, the landlord confirmed that they had received and had the opportunity to review the tenants' documentary evidence prior to the hearing. As a result, I find the landlord was served in accordance with the Act. Regarding the landlord's documentary evidence, the landlord confirmed that it was not served on the tenants and as a result, the landlord's documentary evidence has been excluded in full in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties. If either party is entitled to a monetary order, that order will be emailed to the appropriate party for service on the other party.

### Issues to be Decided

- Are the tenants entitled to money owed for compensation for damage or loss under the Act?
- Are the tenants entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

The parties agreed that a fixed-term tenancy began on September 1, 2016 and reverted to a month to month tenancy after September 1, 2017. The parties agreed that at the start of the tenancy, monthly rent was \$6,000.00 per month and was increased to \$7,022.00 eventually as the tenants made the decision to rent out the downstairs area of the rental home as well and the landlord had issued a rent increase also.

The tenants' monetary claim is listed as \$7,072.00 X 12 months for a total of \$84,864.00 for compensation of 12 months due to what the tenants allege is the landlord failing to comply with the reason for ending the tenancy on the 2 Month Notice to End Tenancy for Landlord's Use of Property dated February 22, 2019 (2 Month Notice). There is no dispute that the landlord requested the previous owner to issue the 2 Month Notice and the reason stated on the 2 Month Notice is listed as:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The tenants confirmed that they did not dispute the 2 Month Notice and vacated on March 12, 2019 as a result. The Notice of Rent Increase document submitted in evidence indicates that monthly rent was increased to \$6,222.00 before the extra \$800.00 was added for the downstairs area, which I find totals \$7,022.00 per month.

In support of their application the tenants presented several documents from UREAL (the property management company) in which the tenants posed as interested parties to determine if the rental unit was available for rent. Although a series of emails were provided and indicate when the property would be available, the landlord stated that the information was incorrect and that the landlord has never contacted the property management company and that they had no authority from the landlord to advertise it on behalf of the landlord.

As a result of the above, witness AS (witness) was called into the hearing and provided affirmed testimony. It should be noted that witness NF was attempted to be contacted and advised the Telus operator was given the name AS, as the person to provide testimony on behalf of the property management company. The witness AS testified that they are an associate broker of the property management company and that their property management company has never represented the landlord respondent. Furthermore, the witness apologized for the confusion that the advertisements have made and that the witness does not recognize the name of the landlord and confirmed there is no contract with the landlord to represent the landlord.

In addition, the witness confirmed that the property management company originally represented the previous landlord as of September 2015; however, did not get any further instructions from the previous landlord since 2018. The witness stated that the status on their website was showing as "active" due to the fact that the previous landlord did not notify the property management company that the property had sold. During cross-examination, the tenants asked the witness if they work for a professional property management company, and the witness confirmed that they did. The tenants also asked the witness which professional agencies they are affiliated with and the witness stated PAMA (Professional Association of Managing Agents) and they have 16 years of property management experience.

The tenancy ended March 12, 2019 with the new owner being landlord. The landlord testified that they continue to occupy the rental unit and deny that they have failed to comply with the reason in which the 2 Month Notice was issued.

### Analysis

Based on the above, and on a balance of probabilities, I find the following.

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlords. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenants did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

After carefully considering the evidence of the parties and the witness, I find that the tenants have failed to meet parts one and two of the four-part test described above. I find the witness to have provided testimony that I afford significant weight, and which contradicts the documentary evidence submitted by the tenants. I also find that the witness testimony supports the position of the landlord, which was that the landlord continues to occupy the rental unit consistent with the reason stated on the 2 Month Notice, and that UREAI did not have any authority from the landlord to advertise the rental unit on behalf of the landlord. In other words, I find the documentary provided by the tenants was not correct and was clarified by the witness as being incorrect during the hearing. In fact, the witness apologized for the confusion the inaccurate information has caused.

As a result of the above, I dismiss the tenants' application, due to insufficient evidence, without leave to reapply. As the tenants' application was not successful, I do not grant the filing fee.

Conclusion

The tenants' application is dismissed in full, without leave to reapply.

The filing fee is not granted.

This decision will be emailed to both parties as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 29, 2020

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Residential Tenancy Branch