



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, MNSD, FFT

### Introduction

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

- a monetary order as compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*; and
- an order for the return of the security and pet damage deposit pursuant to section 38 of the *Act*;
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant BO attended the hearing representing herself and tenant LW. The landlord did not make an appearance.

Rule 7.3 of the Rules of Procedure provides as follows:

**7.3 Consequences of not attending the hearing** – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply. I proceeded with the hearing.

### Preliminary Issues:

#### # 1 Application by Tenants for Amendment: Substituted Service

The tenant provided affirmed testimony that the Dispute Resolution hearing application and evidentiary materials were served on the landlord by text which was permitted based on an application for substituted service by the tenants. An Interim decision by an

Adjudicator was granted on November 21, 2019 which approved the substituted service by the tenants.

Based on the evidence before me, I find the landlord was sufficiently served as required under section 71 of the *Act*.

## # 2 Application by Tenants for Amendment - Security and Pet Damage Deposit

### **4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The tenant BO affirmed that they had vacated the rental unit in November 2019 and had provided their forwarding address to the landlord by text. She provided affirmed testimony that they had received the security and pet damage deposit from the landlord and had filed an amendment to withdraw this claim.

The tenants are proceeding with the monetary claim for compensation of One Months rent and the recovery of the filing fee. This hearing will not be dealing with the claim for the pet damage and security deposit based on the tenant's affirmed testimony and Amendment dated November 18, 2019.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award pursuant to section 67 of the *Act*?

Are the tenants entitled to the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

The tenant BO provided undisputed testimony that this tenancy began in September 9, 2017 and ended in November 2019, following the issuance of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on September 10, 2019.

The tenant BO confirmed their monthly rent at the end of the tenancy was \$1,600.00 and that their security deposit and pet damage deposit was returned in its entirety.

The tenant BO affirmed that they are seeking a monetary award of \$1,600.00 under the *Act*, which provides for tenants to receive the equivalent of one months rent compensation in accordance with section 51(1) of the *Act*.

During the hearing the tenant BO testified that they had been served with a 2 Month Notice to End Tenancy on September 10, 2019 for Landlord's Use of Property, with an effective date of November 30, 2019. The reason cited on the Notice was a close family member intends in good faith to occupy the rental unit.

The tenant argued that the landlords had failed to use the property in accordance with the Notice served on them.

The tenant BO testified that the landlord failed to conduct a move-in and move-out condition Inspection.

The tenant testified that she believed the landlord lived in another property and was refusing to provide an address for service of documents, hence they had to apply for substituted service by text in November 2019.

The tenant testified that she had requested the return of the One Month's rent from the landlord when they were served with the Two Month Notice on September 10, 2019.

### Analysis

The Residential Tenancy Act section 51(1) Compensation for Ending Tenancy for Landlords' Use.

Section 51(1) of the *Act*, provides that a tenant who receives a notice to end tenancy under section 49 (*Landlord's Use of Property*) that complies with the requirements set forth in Section 52 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.

**Tenant's compensation: section 49 notice**

**51 (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.**

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

After having considered the undisputed testimony of the tenant and following a review of all evidentiary documents submitted, I find the tenants' evidence persuasive that the landlord has not taken steps to accomplish the purpose related to the issuance of the 2 Month Notice within a reasonable period of time.

I find that the tenant has provided sufficient evidence and testimony that the tenants are entitled to compensation and a monetary order for One Month's rent pursuant to sections 51(1) and 67 of the Act.

I grant the tenants an order for the sum of \$1,600.00 As the tenants have been successful in their application, I grant the tenants the \$100.00 application fee pursuant to section 72 of the Act.

**Conclusion**

I issue a Monetary Order to the tenants in the amount of \$1,700.00 including the filing fee pursuant to section 67 & 72 of the Act.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: April 07, 2020

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Residential Tenancy Branch