



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFT, MNDCT**

### Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each testified that they were served with the other's materials. Based on the testimonies I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the tenants requested to amend the monetary amount of the claim sought. The tenants indicated that the figure provided on their application for dispute resolution was miscalculated and provided the correct monetary amount based on the monthly rents for the tenancies. As amending a miscalculation is reasonably foreseeable, pursuant to section 64(3)(c) of the Act and Residential Tenancy Rule of Procedure 4.2, I amend the tenants application to decrease the monetary award sought to \$17,112.00 from \$22,500.00.

During the hearing the landlord said that they had additional documentary evidence they wished to submit. The tenants did not object to the landlord's late evidence and welcomed it being entered. As both parties consented to the inclusion of the additional evidence and in accordance with the guidance provided in Rule of Procedure 3.17 I find that the inclusion of the late evidence does not unreasonably prejudice any party or

result in a breach of the principles of natural justice and accept the late submissions by the landlord.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover their filing fee from the landlord?

### Background and Evidence

The parties agree on the following facts. There are two separate tenancy agreements, one for each of the applicant tenants. The monthly rent for the tenant AL was \$714.00 payable on the first of each month. The monthly rent for the tenant NA was \$712.00 payable on the first of the month. The rental unit are bedrooms in a 3-bedroom suite. The suite is located in a detached home with several other suites.

The landlord issued an undated 2 Month Notice to End Tenancy for Landlord's Use with an end of tenancy date of May 31, 2019. The reason provided on the notice for the tenancy to end is that the landlord or a close family member intends to occupy the rental unit. Both tenancies ended in May 2019 in accordance with the 2 Month Notice.

The tenants submit that the landlord did not occupy the rental unit as stated on the 2 Month Notice and seek a monetary award for an amount equivalent to 12 month's rent of \$17,112.00 pursuant to section 51 of the *Act*.

The tenants hired an investigator to confirm if the landlord was residing in the rental unit after their tenancy had ended. The investigator was called as a witness and testified that they had visited the rental unit on two occasions on October 12, 2019 and April 17, 2020. The investigator gave evidence that they questioned a person who appeared to be residing in the rental unit under the pretense of working for the municipality. The investigator testified that on each occasion they were informed by the person who represented themselves as the occupant of the rental unit that the landlord does not reside in the unit but occupies a separate suite in the rental building.

The tenants submitted into evidence a video recording of the investigator questioning a person who appears to reside in the rental unit on April 17, 2020 and being informed that the landlord does not reside in the rental unit.

The landlord testified that they resided in the rental unit from June 2019 when the tenancy ended through December 2019 when another suite became available in the rental building. The landlord said that they shared the rental suite with a friend who was the one who was questioned by the tenants' investigator. The landlord disputed the tenants' submission that they did not occupy the rental unit.

The current occupant of the rental unit was called as a witness for the landlord. The witness testified that they presently reside in the rental unit and moved in to live with the landlord for a period of time before the landlord moved out of the suite and into a separate suite in the building in or about December 2019.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51(2) of the *Act* states that a landlord must pay the tenant an amount that is equivalent to 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,

In the undated 2 Month Notice, the landlord indicated that the landlord or a close family member, intends to occupy the rental unit. The tenants submit that the landlord did not accomplish this stated purpose. The landlord's position is that they resided in the rental

unit from June 2019 to December 2019 satisfying the requirement that the rental unit is used for the stated purpose for at least 6 months duration.

Based on the totality of the evidence submitted by the parties I find that the tenants have not met their evidentiary onus on a balance of probabilities. Both parties provided cogent, reasonable testimony. The tenants primarily rely upon the testimony of their investigator who states that they were informed by an individual who appeared to be residing in the rental unit on October 12, 2019 that the landlord does not reside in the rental unit. While the tenants provided a video recording of an interaction on April 17, 2020 no recording was submitted in support of the October 2019 interview. I find that the hearsay evidence of the tenants' witness to be of little assistance. The landlord disputes the evidence of the tenants and the landlord's witness supports the landlord's assertion that the landlord has resided in the rental unit from June 2019 through December 2019.

While it is possible that the tenants are correct that the landlord did not reside in the rental unit, I find it equally probable that the landlord did occupy the suite as they assert. I find that there is a paucity of documentary or supporting evidence to support either version of events. The materials submitted by the parties consist of tenancy agreements, written submissions and statements and past correspondence which pertain to other disputes irrelevant to the matter at hand. I do not find that the materials submitted by the parties to demonstrate that one position is more likely than the other. Where two contradicting but equally likely version of events is provided, the tenants cannot be said to have met their evidentiary burden on a balance of probabilities.

I do not find the testimony of the tenants' witness, provided with little evidence in support to be sufficient to meet the evidentiary burden. While both parties and their witnesses provided reasonable and self-consistent testimony I find that taken in its entirety the tenants' submissions are not more likely than the version provided by the landlord. Consequently, I find that the tenants have not met their evidentiary burden and I dismiss the application.

Conclusion

The tenants' application is dismissed in its entirety 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: May 11, 2020

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Residential Tenancy Branch