



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC FF

### Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. The landlord did not attend this hearing, although I waited until 1:45 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m. The tenants attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. The tenant K.B. (the "tenant") provided testimony on behalf the tenants.

The tenant testified that on February 19, 2020, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the landlord by registered mail. The tenant provided a registered mail receipt and tracking number in support of service. The package was not claimed by the recipient and returned to the sender. The package was sent to the landlord's address for service as provided for in the tenancy agreement.

Based on the above evidence, I am satisfied the landlord is to be deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the landlord.

### Issues

Are the tenants entitled to monetary compensation and reimbursement of the filing fee?

### Background and Evidence

The tenancy began on September 1, 2019 and ended after the tenants gave notice to end tenancy effective January 31, 2020. The monthly rent as per the agreement was \$1400.00 per month.

The tenants are claiming a total of \$34,500.00 plus the filing fee for this application. The tenant testified that he was forced to end the one year lease early due to the following:

- The landlord was not permitting the tenants 14-year old son from a previous marriage to visit him at home.
- Physical and verbal threats from the landlord.
- Unauthorized entry to the rental unit from two common doors that had no locks.
- Exposed electric wire and holes that allowed cool air to pass through from outside.

The tenant is claiming \$600.00 for moving costs, \$1400.00 for one months rent for being forced to vacate and \$4500.00 in compensation for having to change his son's school. The tenant is claiming \$15,000.00 for the landlord depriving the relationship with his son and \$13,000.00 for the physical threats and lack of privacy. The tenant testified that the landlord attacked him physically on one occasion and tried to slap him. The tenant testified he was forced to call the police.

The tenant submitted a letter dated December 5, 2019 which he wrote to the landlord requesting the landlord comply with the Act in regard to illegal entry; restricting visitors; and threatening the tenants to vacate before the expiry of the lease. In the letter, the tenant states that if the landlord fails to comply the matter will go to dispute resolution with the RTB.

### Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Pursuant to section 67 of the Act, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

*Residential Tenancy Policy Guideline #16* “Compensation for Damage or Loss” provides the following guidance:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The tenants had issued the landlord a breach letter just a month before and cautioned the landlord that a dispute would be filed if the landlord continued to breach the Act. I find it is apparent from this that the tenants were aware they had recourse through the RTB. Accordingly, I find the tenants did not take appropriate steps to mitigate losses but rather ended the tenancy on their volition. The tenants could have filed an application to restrict the landlord entry, to have locks installed or changed and for the landlord to not restrict visitors. The tenants submitted insufficient evidence that the physical or verbal threats from the landlord were an immediate risk to their safety such that they had to vacate the unit on short notice. I further find the tenants have failed to establish that they suffered a loss as a result of the landlord’s non-compliance, specifically a loss totalling \$34,500.00.

### Conclusion

The tenant’s 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: June 30, 2020

---

Residential Tenancy Branch