



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

On February 7, 2020, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Tenants E.E. and S.M. attended the hearing and the Landlord attended the hearing as well. All in attendance provided a solemn affirmation.

E.E. advised that the Landlord was served the Notice of Hearing package by registered mail on or around February 7, 2020 and the Landlord confirmed that she received this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

The Tenants advised that one of the co-tenants attempted to submit evidence, but they were not able to. As well, they stated that they did not know how to submit evidence. As per the hearing, they were advised that instructions on submitting evidence would have been provided to them with the hearing package. As well, since they had applied in February 2020 and as there were four co-tenants, they had ample time and opportunity to submit any evidence for consideration on this file, prior to the hearing. However, there was no documentary evidence before me, and the hearing proceeded accordingly.

The Landlord advised that she served her evidence to the Tenants on June 13, 2020 by registered mail and had this evidence posted to the Tenants’ door on the same day (the registered mail tracking number is listed on the first page of this Decision). The tracking history submitted indicated that this package was delivered on June 16, 2020. In addition, the Landlord submitted a signed proof of service document from a person that personally posted this evidence to the Tenants’ door on June 13, 2020. The Tenants

confirmed that they received this package; however, they stated that the only evidence included was a copy of the tenancy agreement. When reviewing the testimony of the parties and the proof of service documents, I find it more likely than not that the Landlord's evidence was included in the package. As a result, I am satisfied that the Landlord's evidence will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation?
- Are the Tenants entitled to recovery of the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on January 1, 2020 as a month to month tenancy. Rent was established at \$1,500.00 per month and was due on the first day of each month. A security deposit of \$750.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence. The Landlord advised that she changed the locks in the first week of February 2020 because the Tenants had given up vacant possession of the rental unit.

E.E. advised that they viewed the rental unit on or around December 22, 2019 and gave their security deposit to the Landlord. However, the Landlord later told them that that could not move in because the tenants currently occupying the rental unit were not leaving. He stated that those tenants did eventually move out and the Tenants then moved in and signed the tenancy agreement on January 1, 2020. When they moved in, they noticed a crack in the bathtub, so they asked the Landlord to repair it, but the Landlord advised that she would do so in a few months. He stated that the Landlord told them to take the rental unit as is or they could move out. E.E. submitted that the Landlord and Tenant S.M. engaged in a heated argument where the police ended up being called to attend.

E.E. spoke with the Landlord and asked how she would like to proceed, and the Landlord stated that they could move out for February 1, 2020 if they were not happy. As they were not comfortable with the Landlord's behaviour, they elected to move out and the Landlord advised them to find a new tenant. It is their belief that they had a verbal, mutual agreement with the Landlord to end the tenancy. They posted a new ad and two or three prospective tenants viewed the rental unit but did not rent the unit. However, they found an interested party on January 4, 2020 who would move in on January 6, 2020. He claims that this tenant signed a new tenancy agreement with the Landlord to move in on January 8, 2020, but then he said that the new tenant felt that rent was too high, so the Tenants supplemented this by giving the new tenant \$300.00. While they did not return the keys to the Landlord, it is his belief that a new tenant moved in on or around January 8, 2020, that they signed a new tenancy agreement with the Landlord, and that the Landlord also collected rent from them. He confirmed that they never gave written notice to end their tenancy, but they gave vacant possession of the rental unit to these new tenants on or around January 6, 2020. They also received their security deposit back from the Landlord on or around January 8, 2020.

M.S. advised that they waited until January 12, 2020 to get the rent back from the Landlord as new tenants had already moved in. However, he contradictorily stated that they never returned the keys to anyone.

The Landlord advised that the Tenants viewed the rental unit on December 22, 2019 and the issue with the bathtub was discussed. However, after the police were called, she advised the Tenants that she would not agree to end the tenancy early, but it would be fine if they vacated by the end of January 2020. She stated that the Tenants never gave verbal notice to end their tenancy, nor did they give written notice in accordance with the *Act*. She submitted a letter outlining the situation and stated that the Tenants realized on January 1, 2020 when they were moving in their belongings that there would not be enough space, so they asked the Landlord for January 2020 rent back. She did not agree to this as the Tenants were required to provide the proper written notice to end their tenancy.

She stated that she requested that they move by February 1, 2020 and the Tenants requested that the Landlord keep January 2020 rent, but that their security deposit be returned to them. She advised that she returned their security deposit on January 5, 2020, which she acknowledged that she should not have done, but she wanted to be fair. A copy of the electronic transfer of these funds was submitted as documentary evidence. After returning the deposit, the Tenants then requested January 2020 rent back as well. She changed the locks in February because the Tenants did not return the

keys, and then she renovated the rental unit by combining it with the other suite in the basement and turning both into one unit. After doing this, and due to the pandemic, she was unable to rent out the unit until June 1, 2020. She stated that the Tenants' testimony was untruthful, and she submitted copies of text messages between the parties to support this position.

E.E. stated that the Landlord re-rented the unit in January 2020 and collected rent from other tenants as well. He stated that he had evidence of this and evidence that he had been contacted by these other tenants. He stated that the police told him to keep an eye on the rental unit and to take pictures. He advised that he lives near the rental unit; however, none of the evidence that he alluded to was submitted for consideration on this file. The Tenants are seeking compensation in the amount of **\$1,500.00** for January 2020 rent as the Landlord collected their rent, re-rented it to other tenants, and collected their rent as well.

M.S. concurred with E.E.'s testimony that the Landlord re-rented the unit in January 2020, and at that point, he requested that a witness be allowed to call into the hearing to provide the same testimony. As the hearing had exceeded the scheduled one hour by almost a half an hour, as the Tenants had been provided with approximately three-quarters of this hearing time to make their submissions, and as M.S. said that this witness was simply going to reiterate what they had already testified to, this witness was excluded from participating in the hearing pursuant to Rule 7.20 of the Rules of Procedure.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Sections 44 and 45 of the *Act* set out how tenancies end and also specifies that the Tenants must give written notice to end a tenancy. As well, this notice cannot be effective earlier than "one month after the date the Landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement."

Section 52 of the *Act* outlines what is required in a notice to end tenancy and it states that "In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice...

With respect to the Tenants' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided." 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, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenants prove the amount of or value of the damage or loss?
- Did the Tenants act reasonably to minimize that damage or loss?

When reviewing the totality of the evidence before me, the consistent and undisputed evidence is that the Tenants signed a month to month tenancy on January 1, 2020 and they never provided a notice to end tenancy that complies with the *Act*. As explained to them during the hearing, even if they gave the proper written notice to end their tenancy in January 2020, they would still be responsible for February 2020 rent as well. While it appears as if the Landlord seemed to have agreed verbally that the tenancy was over and she returned the security deposit, in reviewing the text messages submitted in combination with the testimony provided, I am satisfied that the problems with this tenancy were initiated by the Tenants and that they were responsible for forcing an attempted end to the tenancy, contrary to the *Act*. Again, I find it important to note that based on their month to month tenancy, even if the Tenants had given the proper written notice in January 2020, they would have still been responsible for paying for January and February 2020 rent in full.

While the Tenants claim that they should not be responsible for January 2020 rent because the Landlord re-rented this unit to another set of tenants, I find it important to note that the burden of proof is on the Tenants to support this claim with evidence. However, apart from their testimony, they have provided no documentary evidence to support this position.

Based on their text message that stated “The stuff doesn’t fit and everyone isn’t feeling good about the relations n[sic] the place”, I find it more likely than not that the Tenants miscalculated the size of the rental unit and this was one of the reasons they wanted to end their tenancy. While the parties may have had some disagreements, I find that the text messages portray a scenario that is consistent with them attempting to end the tenancy contrary to the *Act*. As such, I prefer the Landlord’s evidence on the whole.

As the Tenants did not end the tenancy in accordance with the *Act*, as the Tenants signed a tenancy agreement and were responsible for at least January 2020 rent, and as they did not provide any documentary evidence to support their allegation that the rental unit was re-rented to another set of tenants in January 2020, I dismiss their claim for compensation in its entirety.

As the Tenants were not successful in this Application, I find that they are not entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

Based on above, I dismiss the Tenants’ Application 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: July 1, 2020

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Residential Tenancy Branch