



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ASCENT REAL ESTATE MANAGEMENT  
CORPORATION and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

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

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

The tenant, B.C. attended the hearing via conference call and provided affirmed testimony. The tenant, P.C. did not attend and was unrepresented. The landlord did not attend or submit any documentary evidence. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via email on April 4, 2020. I accept the undisputed affirmed testimony of the tenant and find that the landlord was sufficiently served as per sections 88 and 89 of the Act. Despite not attending the hearing, the landlord is deemed served as per section 90 of the Act.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation and recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenants seek a monetary claim of \$13,100.00 which consists of:

\$11,400.00	\$1,900/month X 6 months
\$600.00	Piano Moving Costs
\$1,000.00	Moving Costs

The tenant stated that they seek this claim as compensation for being forced to vacate the rental unit. The tenant stated the landlord failed to act in relation to the tenants' concerns with a lower level tenant. The tenant stated upon being notified the landlord issued an "Infraction Notice-Loud Yelling and Fighting" to the tenant dated December 20, 2017 from the "head office". The tenant stated that no such incident took place, but when the tenant contacted the landlord to discuss the matter no response was forthcoming. The tenant attempted to contact the landlord via telephone and email without any success. The tenant stated that the onsite property manager was contacted and that she was unaware of any complaints or issues since any complaints would be reported directly to her before being forwarded to the "head office". The tenant stated that a subsequent "Final Warning: Re Noise" letter dated January 24, 2018 was served to the tenants from the "head office". The tenant again stated that they were unaware of any noise issues and the landlord was contacted, but no response was forthcoming again despite multiple attempts. The tenant then stated that a 1 month notice to end tenancy dated February 2, 2018 was issued and served to the tenant when he was out of town. The tenant was advised of the notice by his spouse, P.C. The tenant stated because of personal family issues and their continued lack of communication from the landlord, the tenants decided to vacate the rental unit in compliance with the 1 month notice dated February 2, 2018 with an effective end of tenancy date of March 31, 2018. The tenant further stated that during this time, no communication was forthcoming from the landlord's "head office" but that normal communications were possible with the onsite property manager. The tenant stated that the onsite property manager was unable to investigate the letters and the notice to end tenancy issued by the "head office". The tenant stated that they did not pursue the issue at the time when the onsite property manager provided an answer of "I don't know" for the reasons and details of the warning letters and the 1 month notice.

The tenant stated that the monetary claim of \$1,900.00/month for the 6 month period is not based on any losses or expense and is based only on what their monthly rent rate is.

The tenants seek compensation for being "forced out" by the landlord and recovery of their moving costs.

### 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.

I find that the tenant has failed to establish a claim for the \$13,100.00. The tenant provided undisputed affirmed testimony that they vacated the rental unit on March 31, 2018 as per the 1 month notice dated February 2, 2018. The tenant stated that they did not consider disputing the notice until after they had vacated the rental unit due to personal family matters. As such, I find that the tenant's claims for moving costs are dismissed as it cannot be said that the landlord "forced" the tenants to incur this expense. The tenant confirmed in his testimony that he did read the 1 month notice and was aware that he could file for dispute within 10 days of receiving the notice. In this case, the tenants chose to comply with the 1 month notice and vacate the premises.

As for the tenant's claim for \$11,400.00 for compensation equal to 6 months of rent at \$1,900.00 per month. The tenant has provided undisputed affirmed testimony that the monetary amount is arbitrary and not based on any expenses or loss incurred due to receiving the 2 warning letters or the 1 month notice to end tenancy. The tenant stated that this amount was chosen as it was what the monthly rent rate was and that the issues occurred within a 6 month period. The tenant has provided undisputed testimony that they were frustrated by the landlord's inaction in responding to their communications due to the 2 warning letters and the 1 month notice. Despite providing undisputed testimony of being served with the 2 letters and the 1 month notice, the tenant was unable to provide sufficient evidence of any actual losses or sufficient details of how they suffered from this "harassment" as indicated by the tenant. On this basis, I find that the tenant has failed in this portion of the claim.

### Conclusion

The tenants' application is dismissed 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: August 12, 2020

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Residential Tenancy Branch