



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFL

### Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

This hearing originally convened on June 19, 2020 and a decision dated June 19, 2020 was made. The landlord applied for review consideration on July 9, 2020 and a review consideration decision dated July 14, 2020 ordered that a new hearing of the original application take place.

The July 14, 2020 review consideration decision ordered the landlord to serve the following documents to the tenant:

- Notice of hearing;
- Review consideration decision;
- Current address for service; and
- Evidence.

Both parties agree that the landlord served the tenant with the above documents via registered mail in July of 2020. I find that the above documents were served in accordance with section 89 of the *Act*.

The July 14, 2020 review consideration decision ordered the tenant to serve the landlord with:

- The tenant's application for dispute resolution; and
- Evidence.

The tenant testified that he posted the above documents on the door of the subject rental property and put them in the mailbox of the subject rental property in July of 2020. The landlord confirmed receipt of the above documents in July of 2020. While the above method of service does not accord with the service requirements under section 89 of the *Act*, I find that the landlord was sufficiently served with the above documents, for the purpose of this *Act*, pursuant to section 71 of the *Act*, because the landlord confirmed receipt of the above documents.

#### Issues to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2018 and ended on November 7, 2019 after the tenant was personally served with a Two Month Notice for Landlord's Use of Property (the "Notice") on August 28, 2019. Monthly rent in the amount of \$1,455.00 was payable on the first day of each month. A security deposit of \$695.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The Notice was entered into evidence and states the following reason for ending this tenancy:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The tenant testified that the subject rental property has remained empty since he moved out and that the landlord or a close family of the landlord has not moved in. Pursuant to section 51 of the *Act*, the tenant is seeking 12 months' rent, in the amount of \$17,460.00, from the landlord.

The landlord testified that he served the tenant with the Notice because his son was going to move into the subject rental property. The landlord testified that after the tenant moved out, his son saw the condition of the subject rental property and refused to move in. The landlord testified that his son refused to move in because of the damage and uncleanness left by the tenants. The landlord testified that he has not yet taken steps to repair the subject rental property because he has not been feeling well, is having family problems and does not have the money. The landlord did not enter documentary evidence to support his testimony of health issues.

The landlord entered into evidence photographs of the underneath of appliances which show, dirt, debris and rodent droppings. The landlord testified that the appliances were not on rollers. The landlord also entered into evidence photographs of a stained bathtub, the inside of a toilet and kitchen cabinets missing a faceplate. Other photographs not described here were also entered into evidence, while not described here, they were considered. The landlord testified that the toilet did not flush.

The tenant testified that the house was the same condition on move in as on move out and that he did not know there were rodent droppings underneath the appliances. The tenant testified that the house is very old and that it has not been updated in at least 20 years and any damage was due to regular wear and tear. The tenant testified that the toilet was in working order at the end of the tenancy. The tenant testified that a faceplate in the kitchen came off and that the tenant offered to re-attach it, but the landlord told him that it was a minor repair and he would do it. The landlord did not refute this testimony.

The landlord entered into evidence a move in and move out condition inspection report, both of which were signed by both parties. The move in condition inspection report states that most of the property is in fair or good condition. The move out condition inspection report states that there are no damages to the subject rental property.

The landlord testified that he wrote that there were no damages because he felt bad for the tenant and did not want the tenant to pay for any of the damages. The tenant testified that the landlord wrote “no damages” because there were no damages at the subject rental property.

### Analysis

Based on the testimony of both parties, I find that the landlord personally served the tenant with the Notice on August 28, 2019 and that the tenant moved out pursuant to that Notice.

Section 51(2) of the *Act* states that subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 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.

Both parties agree that the subject rental property has been vacant since the tenant moved out. I find that the rental unit has not been used for the purpose stated on the Notice for the past nine to ten months, contrary to section 51(2) of the *Act*.

Section 51(3) of the *Act* states:

The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
- (b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Residential Tenancy Policy Guideline #50 states:

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations

Residential Tenancy Policy Guideline #1 states:

If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy.... If the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it....

The landlord testified that the appliances were not on wheels. Pursuant to Residential Tenancy Policy Guideline #1, I find that the tenant was not required to clean under the appliances, and that this is the landlord's responsibility.

Section 21 of the Residential Tenancy Act Regulation states:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The majority of the photographs were of dirty flooring beneath appliances. Pursuant to my above finding, it was the landlord's responsibility to clean beneath the appliances. While the landlord provided some other photographs of superficial damage such as an unattached faceplate, I find that the landlord has not provided me with a preponderance of evidence to refute the contents of the move out condition inspection report. I therefore accept the report and find that there was no significant damage to the subject rental property at the end of the tenancy.

The landlord had an obligation, prior to serving the tenant with the Notice, to make sure that the subject rental property was in a state the landlord's son would live in. I find that the condition of the subject rental property and the landlord's son's refusal to move in, does not constitute an extenuating circumstance under section 51(3) of the *Act*.

Pursuant to my above findings, I Order the landlord to pay the tenant 12 months' rent in the amount of \$17,460.00.

As the tenant was successful in this application for dispute resolution, I find that he is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

### Conclusion

I issue a Monetary Order to the tenant in the amount of \$17,560.00

The tenant is 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: August 24, 2020

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Residential Tenancy Branch