



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Multiple Realty Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      MNSD MNDCT FFT

### **Introduction**

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

CM appeared for the tenants, while KH ("landlord") represented the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

### **Preliminary Issue - Service of the Application for Dispute Resolution**

The landlord's agent testified that the tenant had never served him with any written documents or the notice of hearing for the tenants' application, and he had only become aware of the hearing when he received an email reminder from the tenancy branch. The tenant confirmed that the landlord was never served with the tenants' application or any written evidence for this hearing.

Section 89 of the *Act* establishes the following special rules for service of documents.

### ***Special rules for certain documents***

**89** (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

Although the landlord was never served with the tenants' application in accordance with section 89 of the *Act*, the landlord confirmed that they were okay with proceeding with the scheduled hearing, and consideration of the tenants' application. Both parties were informed about service requirements of an application and evidentiary materials, as well as their options on how to proceed. Both parties were also informed how a decision would be final and binding if the hearing proceeded. The tenants' application was summarized and confirmed by the tenant in the hearing. Both parties confirmed that they were okay and prepared to proceed with the tenants' application on the basis of oral testimony provided by both parties in the hearing. No written evidence will be considered as neither party had served each other with any materials in accordance with section 88 of the *Act*.

At the beginning of the hearing, both parties confirmed that the tenants' security deposit was returned, and the tenants were no longer pursuing this portion of their application. Accordingly, this portion of the tenants' application was cancelled.

### **Issues**

Are the tenants entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to recover the cost of the filing fee from the landlord for this application?

## **Background and Evidence**

This fixed-term tenancy began on March 15, 2020, with monthly rent set at \$1,800.00, payable on the first of every month. The tenant testified that the tenancy ended on May 1, 2020, while the landlord's agent testified that the tenancy ended on May 6, 2020. The landlord collected a security deposit in the amount of \$900.00, which was returned to the tenants.

The tenants are seeking a monetary order in the amount of \$3,000.00. The tenant testified that they had to end this fixed term tenancy early because shortly after they had moved into the rental unit, they discovered a moth infestation that was never disclosed to them. The tenant testified that they suffered significant financial losses due to the moth infestation, including the cost of a treatment, damage to their personal belongings, and the costs associated with moving. The tenant testified that the financial losses far exceeded the \$3,000.00 claimed, and felt that the amount requested was reasonable considering the losses, and failure of the landlord to properly inform them of the issue. The tenants dispute that had caused the moth infestation as they never had the issue before, and have heard from other occupants and tenants that the previous tenants had moved out for this reason.

The landlord disputes the tenants claims that the rental unit had a moth infestation problem. The landlord testified that they investigated and treated the problem immediately, and dispute that they were aware of a moth infestation before the tenants had moved in. The landlord testified that the previous tenant was a single female who had moved out to live with her partner.

## **Analysis**

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenants must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

### ***Liability for not complying with this Act or a tenancy agreement***

**7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

*(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely*, of the actions of the other party (the landlord) in violation of the Act or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the Act by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenants bear the burden of establishing their claim on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the Act on the part of the other party. Once established, the tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

On preponderance of the sworn testimony before me, and on a balance of probabilities I find as follows. As stated above, the tenant applicants have the burden of proof in supporting their claim for monetary compensation. Although I sympathize with the tenants that they have suffered significant losses during this tenancy, I find that the tenants did not provide sufficient evidence to support that the landlord had failed to meet their obligations under the Act, tenancy agreement, and as required by law.

Although I find it undisputed that the tenants may have had to deal with pest issues during this tenancy, I am not satisfied that the loss claimed was due to the negligent or deliberate act of the landlord. Furthermore, as noted above, the burden of proof is on the tenants to support the actual monetary value of their losses. Although the tenant testified to the significant losses suffered by the tenants, I find that the tenants did not provide any receipts, invoices, estimates, or witness testimony to support these losses. For these reasons, I dismiss the tenants' application for monetary compensation without leave to reapply.

As the filing fee is normally awarded to the successful party after a hearing, I dismiss the tenants' application for recovery of the filing fee without leave to reapply.

**Conclusion**

As the tenants withdrew their application pertaining to their security deposit, this portion of their application was cancelled.

I dismiss the remainder of the tenants' entire 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: September 25, 2020

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Residential Tenancy Branch