



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT

### Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for a monetary order in the amount of \$39,360.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The tenant CC (tenant) and two agents for the landlord, BL and MY (agents) attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. Only the evidence relevant to my decision has been included below.

At the start of the hearing, the agents confirmed that they had received and had the opportunity to review the tenant's documentary evidence prior to the hearing. As a result, I find the landlord was served in accordance with the Act. Regarding the landlord's documentary evidence, the tenant testified that they did not receive the landlord's documentary evidence. As a result, the agents were asked how their documentary evidence was served on the tenant. The agents stated that their documentary evidence was served by registered mail twice. The first time was to the address provided by the tenant in their application and the second time was to the tenant's work address provided by the tenant. The tenant admitted that they have not been home or to work to check for either registered mail package and instead have been living at another residence. The agents provided a registered mail tracking number, which has been included on the style of cause for ease of reference.

According to the Canada Post registered mail tracking website, the landlord mailed the registered mail package to the tenant on August 18, 2020, and it was delivered the next day on August 19, 2020. Given that the tenant admitted to not checking the mail at

either their service address listed on their application or the work address, which I find the landlord was not required to serve the tenant at, I find the tenant was sufficiently served under the Act as of August 23, 2020 as section 90 of the Act deems that documents served by registered mail are deemed served 5 days after the documents are mailed. I have also considered that during the pandemic, Canada Post are not requiring signatures for registered mail. Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties.

### Issue to be Decided

- Is the tenant entitled to money owed for compensation for damage or loss under the Act?

### Background and Evidence

The parties agreed that a fixed-term tenancy began on November 1, 2018 and reverted to a month to month tenancy after March 25, 2020, when the tenants returned the keys to the rental unit. The parties agreed that by the of the tenancy, monthly rent was \$3,280.00 per month. The rental unit is a single-family home.

The tenant's monetary claim is listed as \$3,280.00 X 12 months for a total of \$39,360.00 for compensation of 12 months due to what the tenant alleges is the landlord failing to comply with the reason for ending the tenancy on the 2 Month Notice to End Tenancy for Landlord's Use of Property dated December 18, 2019 (2 Month Notice). There is no dispute that the reason stated on the 2 Month Notice is listed as:

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).

There was no evidence before me that the tenant disputed the 2 Month Notice and vacated on March 25, 2020, which was agreed to by the parties, even though the effective vacancy date was listed as February 29, 2020.

In support of their application the tenant provided an email dated August 23, 2020, from JB who writes in part the following:

...I work from home and spend most of the day at my home office. I did not see anyone else occupy [rental unit address] after them: no cars stayed in the driveway overnight, no one came to and from the house on a regular basis. It was dark inside, no lights were on, curtains in the living room were closed, the lawn was unkept and the garden was overgrown for months.

Maybe once or twice per month, what looked like the owners entered the house and left almost immediately. On occasion, someone came to cut the grass, but it didn't appear like they ever entered the house.

The house looked completely vacant and unchanged (curtains, kitchen, parking garage) until July 31, 2020 when I witness a large moving truck arrive, and which look like it was moving someone into the house.

We live directly across the street and have complete visibility to [rental unit address] from most rooms in our house as the South side of our house is completely faced in glass...

[Reproduced as written except for anonymizing rental unit address to protect privacy]

The tenant also referred to a listing photo, which is not dated, which shows the rental unit being listed for \$3,790,000.00.

The landlord responded to the tenant's evidence by stating several points in order. Point one was that the agents do not agree with the email of JB and stated that JB does not live directly across from the rental unit as claimed in the email and that JB's residence opens to another street and that due to cedar, maple and fruit trees, have only partial view of the rental property and parking area/driveway. The agents provided the address of the property directly across from them, which did not match the address provided by JB.

The landlord's second point raised by the agents was that the tenant has a close relationship with JB and that JB is motivated to write that email for the tenant as they are good friends, and as a result, the agents questioned the truthfulness of the email.

The agents raised a third point, which was the contradictory nature of the email from JB. For example, the agents pointed out that JB wrote that the lawn was unkept yet later writes someone came by the cut the grass, which is inconsistent. The agents stated that someone was hired to cut the lawn as of May 19, 2020.

The fourth point raised by the agents was that the curtains were not opened as they faced north, and that the agents, who are the mother and father of the landlord, always intended to occupy the home with the landlord and that they chose to keep the curtains closed for privacy.

Point five, raised by the agents, was that it was not dark inside the rental unit as claimed by JB as the agents had three automatic lights that were programmed to come on in the evening, so JB had to be making that up in their email. JB was not called as a witness by the tenant, so could not be cross-examined during the hearing by the agents.

The agents stated that they began to move personal items into the home as of April 7, 2020, and that moving was a slow process due to COVID-19, and that when the 2 Month Notice was served in December 2019, there were no cases of COVID-19 reported and that the province was not in a state of emergency until March 2020.

The agents testified that the landlord was in New York, USA and could not travel due to a travel ban due to the pandemic/COVID-19, but that the plan from the start was for the landlord and her parents to occupy the home together as a family. The agents clarified that the landlord considered selling the home as a result of the pandemic and listed it for sale as of June 16, 2020; however, changed their mind and removed the listing on July 27, 2020. There was no evidence presented that the home has ever sold since the tenancy ended on March 25, 2020.

The agents testified that they are living at the former rental property and that the transition and ultimate move of all their belongings was delayed due to the pandemic/COVID-19. The agents also testified that the home was insured as "owner occupied" after the tenant vacated the rental unit, which supports that the landlord complied with the reason stated in the 2 Month Notice. The agents also stated that some repairs were necessary before the agents, who are the parents of the landlord, could move into the rental unit and that the handyperson who did previous work at the rental unit up until March 2020, would not return due to COVID-19.

The tenant replied to the landlords by stating that a real estate agent neighbour was the person who advised him that the property was for sale and that a for sale sign was not

listed in front of the home. The tenant also denied that they are close friends with JB. In addition, the tenant also raised the timing of the sale listing being removed from the market just a few days after being served with the dispute resolution package. In addition, the tenant also referred to a Google Street View image that was not submitted in evidence for my consideration and a video that was also not served in evidence, which the parties were advised I could not consider as it was not submitted for my consideration and that the timeline to submit evidence had already passed by the time of the hearing.

The tenant also raised the issue of the handyman being available to work in March 2020; which the landlords clarified was because that was up until the point where the pandemic began, and after COVID-19 lockdown was announced, the handyman was no longer willing to come to complete further work at the rental unit, which delayed the transition of the landlord and her parents to move into the home after the tenant vacated on March 25, 2020.

### Analysis

Based on the above, and on a balance of probabilities, I find the following.

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage.

Finally, it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I will first address the weight of the email written by JB. I afford the email limited weight as JB was not at the hearing to be cross-examined by the landlord or their agents. I also find the response by the agents to be valid and that I find portions of the email to be contradictory in terms of the location of JB's property not being directing across from the rental unit as claimed by JB, yard maintenance and lighting in the home. Therefore, I afford the email from JB little weight in this decision.

Furthermore, I find the act of listing the property for sale and then removing the listing approximately one month later without the property selling does not equate to the landlord failing to comply with the reason stated in the 2 Month Notice. I have reached this finding by considering that the agents have provided sufficient evidence that the landlord or a close family member, in this case, the parents of the landlord, were occupying the home and I find the rationale provided to explain the delay between March and July before the entire home was ready to have all personal items moved into the rental unit due to concerns and limited availability of a handyman and movers due to the pandemic/COVID-19 to be reasonable. I also have insufficient evidence before me that the rental unit was re-rented to other tenants.

Given the above, and after carefully considering the evidence of the parties, I find that the tenant has failed to meet parts one and two of the four-part test described above. In other words, I find the documentary provided by the tenant was contradictory after hearing from the agents. In addition, section 51(3) of the Act applies and states:

**Tenant's compensation: section 49 notice**

**51(3) 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.

[Emphasis added]

As a result of the above, I find that the landlord is excused from accomplishing the stated purpose between March and July 2020 due to COVID-19/pandemic related delays that would not have been known in December 2019, when the 2 Month Notice was served on the tenant. I find the COVID-19 pandemic resulted in unexpected delays in the landlord and their family fully moving into the rental unit until July 2020. Therefore, I dismiss the tenants' application, due to insufficient evidence, without leave to reapply.

As the tenant's application was not successful, I do not grant the filing fee.

#### Conclusion

The tenant's application is dismissed in full, without leave to reapply.

The filing fee is not granted.

This decision will be emailed to both parties as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 9, 2020

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Residential Tenancy Branch