



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

On May 5, 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 recovery of the filing fee pursuant to Section 72 of the *Act*.

Tenant C.S. attended the hearing. The Landlord attended the hearing as well. All in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing and evidence package was served to the Landlord by registered mail on May 20, 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 and evidence package. As such, I have accepted the Tenants’ evidence and will consider it when rendering this Decision.

The Landlord advised that she served her evidence to the Tenants by email, as per their request, on September 11, 2020. The Tenant confirmed that they received this evidence and she took no issue with when they received it. As such, I have accepted the Landlord’s evidence and will consider it 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 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 monetary compensation?
- Are the Tenants entitled to recover 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 October 15, 2017 and ended when the Tenants gave up vacant possession of the rental unit on April 1, 2019 based on a Mutual Agreement to End Tenancy. Rent was established at \$1,800.00 per month and was due on the first day of each month. A security deposit of \$900.00 and a pet damage deposit of \$250.00 were also paid. A copy of the signed tenancy agreement and the Mutual Agreement to End Tenancy was submitted into evidence for consideration.

The Tenant advised that they are seeking compensation in the amount of **\$1,800.00** because she realized after the tenancy ended that the last month of rent should be owed to them as the Landlord wanted to occupy the rental unit for her own use. She stated that the Landlord gave them the Mutual Agreement to End Tenancy to sign and, contrary to the updated Mutual Agreement to End Tenancy, nowhere on the form they signed does it indicate that they were not obligated to sign it, nor does it state that they forfeit their right to any compensation. She stated that they feel duped by signing the Mutual Agreement to End Tenancy, and they would not have moved had they known this.

The Landlord advised that she contacted the Residential Tenancy Branch seeking information on ending the tenancy and she was presented different options to use. However, she elected to use the Mutual Agreement to End Tenancy and the Tenants signed this document. All parties agreed that there were no discussions with respect to any monetary compensation.

### Analysis

Upon consideration of the testimony 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.

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."

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

Regarding the Tenants' claim for compensation owed to them in the amount of one month's rent, I find it important to note that this compensation only applies, pursuant to Section 51 of the *Act*, if they were first served a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"). However, the undisputed testimony before me is that the Tenants were never served this Notice.

Moreover, the Tenant advised that she was not aware of these compensatory requirements until after the tenancy had ended. As such, I am satisfied that the Tenants did not research their, or the Landlord's, rights and responsibilities under the *Act* prior to signing the Mutual Agreement to End Tenancy. While I understand the Tenant's viewpoint during the hearing, had they looked into their rights prior to signing the Mutual Agreement to End Tenancy, they would have realized that they were not obligated to sign this form, and that by signing this form, they were agreeing to end the tenancy mutually, not pursuant to Section 51.

As the undisputed testimony before me is that the Tenants were not served this Notice, I am not satisfied that they have established this claim and I dismiss it in its entirety.

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

### Conclusion

Based on the above, I dismiss the Tenants' Application in its entirety.

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 17, 2020

---

Residential Tenancy Branch