



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT

### Introduction

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

- a monetary order for compensation under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67.

The two landlords, "tenant FY," and "tenant NE" did not attend this hearing, which lasted approximately 48 minutes. Tenant ME ("tenant"), the tenant's advocate MK ("tenants' advocate") and "tenants' advocate JVD" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that the tenants' advocate had permission to represent the tenants at this hearing.

The hearing began at 11:00 a.m. and ended at 11:48 a.m. The tenants' advocate JVD left the hearing at 11:06 a.m., after the tenant confirmed that he did not require his assistance, since tenants' advocate was representing the tenants.

The tenant stated that he served the landlords with separate copies of the tenants' application for dispute resolution hearing package on December 19, 2020. The tenant provided two Canada Post receipts and confirmed the tracking numbers verbally during the hearing. The tenant claimed that the mail was sent to the rental unit address, which was provided as the landlords' address on the Ten Day Notice to End tenancy for Rent or Utilities issued by the landlords to the tenants, a copy of which was provided for this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were deemed served with the tenants' application on December 24, 2020, five days after their registered mailings.

The tenants' advocate stated that he emailed an affidavit to the landlords on January 22, 2021. I notified him that email service was not permitted under section 88 of the *Act*. I informed him that I could not consider the affidavit at the hearing or in my decision. The tenant claimed that he still wanted to proceed with the hearing.

### Issue to be Decided

Are the tenants entitled to a monetary order for compensation under the *Act, Regulation* or tenancy agreement?

### Background and Evidence

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

The tenant testified regarding the following facts. This tenancy began on December 15, 2015 and ended on March 25, 2020. Monthly rent in the amount of \$1,557.00 was payable on the first day of each month. A security deposit of \$700.00 was paid by the tenants and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties.

The tenants' advocate stated the following facts. On December 27, 2019, the tenant told the landlords that the tenants would be out of the country until April 5, 2020. The tenant told the landlords he would be subletting the rental unit. The tenant claimed that he would pay rent three months in advance to the landlords. In March 2020, when the landlords wanted to cash the tenants' rent cheque, due to human error, there was not enough money in the tenants' account. The tenant then deposited enough money in his account right away, but the landlords refused to cash his rent cheque. The landlords then claimed that the tenants abandoned the rental unit, after the tenant told the landlords that they would be away, and the landlords had said it was okay to be away.

The tenants' advocate stated the following facts. The landlords issued a One Month Notice to End Tenancy for Cause to the tenants on March 25, 2020, during the covid-19 pandemic when they were not supposed to do so. The landlords changed the locks to the rental unit and refused the tenants access to remove their belongings. There were two previous Residential Tenancy Branch ("RTB") hearings, where the landlords did not attend. The first hearing on June 9, 2020, dismissed the tenants' application for a

monetary order for hotel and moving expenses at that time. The second hearing on November 13, 2020, ordered the landlords to give the tenants access to the rental unit to remove their belongings, which the landlords violated. That decision also gave the tenants the ability to reapply for a monetary order after they moved their belongings. The tenants had to move into a motel, and it is hard for the tenant to find a job without his documents from the rental unit.

As per their application, the tenants seek a monetary order of \$34,925.00. The tenants' monetary order worksheet indicates that they are seeking \$1,775.00 for hotel expenses because they were unable to access the rental unit and \$33,150.00 for belongings based on written estimates.

### Analysis

I find that I have jurisdiction to determine this matter, as the two previous RTB decisions indicate that the tenant has leave to reapply for future monetary claims, after the order for access to the rental unit was given. The file numbers for the previous hearings appear on the front page of this decision.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

The following Residential Tenancy Branch ("RTB") *Rules of Procedure* are applicable and state the following, in part:

#### *7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

*7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

On a balance of probabilities and for the reasons stated below, I dismiss the tenants' entire application of \$34,925.00 without leave to reapply.

During the hearing, the tenant and the tenants' advocate failed to go through any specific monetary claims or the amounts for each claim. They did not review the tenants' monetary order worksheet. I find that they did not properly present the tenants' evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*.

This hearing lasted 48 minutes, so the tenant and the tenants' advocate had ample opportunity to present their application, without interruption, as the landlords did not even appear at the hearing. During the hearing, I informed the tenant and the tenants' advocate that they were required to present the tenants' monetary claim. I repeatedly asked them if they had anything else to say or any information to present. However, they failed to go through any of the tenants' documents that were submitted for this hearing, including receipts, estimates and photographs. The tenants did not indicate whether costs were paid and if so, how and when they were paid.

Conclusion

The tenants' entire 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: March 08, 2021

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Residential Tenancy Branch