



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, OLC, LRE, AAT, DRI, PSF, MNDCT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act* (the “Act”) to cancel a Two-Month Notice to End Tenancy for Landlord's Use of Property (the “Notice”) issued on December 31, 2020, to dispute a rent increase that is above the amount allowed by law, for an order that the landlord provide services or facilities required by the tenancy agreement or law, for a monetary order for losses or money owed, for an order to allow the Tenants access to the unit or site, for an order to suspend or set conditions on the landlord's right to enter the rental unit or site, for an order that the landlord comply with the Act, regulation and/or the tenancy agreement, and to recover the cost of the filing fee. The matter was set for a conference call.

The Landlord, the Landlord's Counsel (the “Landlord”), and both Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

### Preliminary Matter – Jurisdiction and Rent Increase

At the outset of these proceedings, the issue of jurisdiction was raised by the Landlord.

The parties agreed that the Landlord and one of the Tenants (A.M.) are of an Aunt and nephew family relation and that this living arrangement commenced as a shared living space with the intent of creating a separate and self-contained unit in the basement of the rental property at some point in the future.

The Landlord argued that it was never their intent to enter into a formal tenancy agreement with their nephew, Tenant A.M., that they did collect rent in the amount of \$800.00 per month from Tenant A.M. but that it was for a shared living arrangement not a tenancy. The Landlord testified that at the time Tenant A.M. moved into their home, they rented a room in the basement and had full use of the upstairs kitchen. The Landlord testified that although there was a bathroom and hotplate in the basement, the Tenant A.M. was freely allowed to use all areas of the home, including the upstairs bathroom, kitchen, and back yard.

The Tenant A.M. testified that they originally moved into the home knowing that they would be sharing a kitchen with their Aunt but that there was a plan to install a full kitchen in the basement, making it a self-contained unit that they would rent from their Aunt.

The Landlord agreed that there was a plan to install a full kitchen in the basement but that the timing for the installation of the second kitchen had not been firmly agreed upon. Both parties agreed that the installation of the kitchen was completed in March 2019. However, both parties also agreed that there was no formal change to their living arrangements agreement at that time. Both parties agreed that they continued to have a good relationship with each other and that they continued using living spaces freely, including the upstairs kitchen.

Both the Landlord and the Tenant testified that during this living arrangement, the Tenant A.M. became engaged and eventually married in July 2020. The parties also agreed that an agreement was reached between the Landlord, the Tenant A.M, and their spouse, Tenant J.M. would move into the Landlord's home after the wedding and that A.M. and J.M would rent the basement unit from the Landlord for \$900.00 per month.

The Tenants and the Landlord agreed that the Tenants, A.M. and J.M., did move into the basement rental unit in July 2020 and that they paid a monthly rent for that space of \$900.00 on the first day of each month.

The Tenants asserts that they were in a tenancy under the *Residential Tenancy Act*; the Landlord asserts that this was a family shared living arrangement that did not fall under the *Residential Tenancy Act*.

I have reviewed the entirety of the verbal testimony and documentary evidence submitted by both these parties on the matter of Jurisdiction, and although it was clearly the intent of this Landlord to enter into a shared living arrangement with their nephew in February 2017, I find that this arrangement changed in July 2020, when the second Tenant J.M. move in and started paying rent.

From the email evidence before me it is clear that there was a plan to eventually create a separate, self-contained rental unit in the basement of the Landlord's property although no clear time for the completion of this renovations was indicated. I accept the agreed-upon testimony of these parties that the renovations to the kitchen to the basement suite were completed in March 2019; however, I find that there is no evidence before to show that there was any deviation from the original shared living arrangement between these parties in March 2019.

However, I accept the testimony of these parties that there was a request to move a third party in to the basement unit and the Landlord and Tenants entered into a verbal agreement to allow the additional person to move in for an agreed-upon rent of \$900.00 per month for both the Landlord's nephew, Tenant A.M. and Tenant J.M. to live in the now self-contained basement unit of the Landlord's rental property.

I find that the actions of these parties, to negotiating a rent payment, then the payment of that agreed to rent and occupation of the rental unit, effectively ended the previously shared living arrangement between the Aunt and nephew and created a tenancy under the *Residential Tenancy Act* between the Landlord and these Tenants.

Therefore, I find that the *Residential Tenancy Act* does apply to this tenancy, and I accept jurisdiction over this matter.

On the matter of the Tenants' claim of a rent increase above the amount allowed by law, as it has been determined that the previous living situation that the Tenant A.M. had with the Landlord was for a shared living arrangement between a family members and not a tenancy, I find that any change in the amount of payment for the shared living arrangement to amount collected in rent for the tenancy that started July 2020, was not a rent increase but in fact an initial tenancy negotiation and that these parties were free to negotiate to any amount of rent that was agreeable to these parties.

Overall, I find that these two parties entered into a tenancy agreement that started July 1, 2020, for an agreed-to rent payment of \$900.00 per month due of the first day of each month.

#### Preliminary Matter – Issues Amended

At the outset of these proceedings, the parties agreed that the Tenants had moved out of the rental unit on March 31, 2021.

The Tenant's agreed that as this tenancy had ended before the date of these proceedings, that their claims for an order that the landlord to provide services or facilities required by the tenancy agreement or law, for an order to allow the Tenants access to the unit or site, for an order to suspend or set conditions on the landlord's right to enter the rental unit or site, for an order that the landlord to comply with the Act, regulation and/or the tenancy agreement, were no longer required.

All parties agreed that the Tenants' application would be amended during these proceedings to remove their claims for an order that the landlord provide services or facilities required by the tenancy agreement or law, for an order to allow the Tenants access to the unit or site, for an order to suspend or set conditions on the landlord's right to enter the rental unit or site, and for an order that the landlord comply with the Act.

I will proceed on the remaining matter before me for a monetary order for losses or money owed pursuant to section 51 of the *Act* and the recovery of the filing fee for this application.

#### Issues to be Decided

- Are the Tenants entitled to a monetary order for losses or money owed?
- Are the Tenants entitled to the return of the filing fee?

#### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

As determined above, this tenancy began on July 1, 2020, as a month-to-month tenancy. Rent in the amount of \$900.00 was due on the first of each month, and no security deposit or pet damage deposit was paid for this tenancy. The parties agreed that no written tenancy agreement was created for this tenancy.

Both the Tenants and the Landlord agreed that the Notice to End Tenancy was served in person by the Landlord to the Tenants on December 31, 2020, pursuant to section 49 of the *Act*. Section 49 of the *Act* states that upon receipt of a notice to end a tenancy, a tenant who wishes to dispute the notice must do so by filing an application for dispute resolution within 15 days of receiving the Notice. In this case, the Tenant did dispute the Notice within the required timeline.

The Tenants' testified that they initially filed to dispute the Notice to end Tenancy but that they changed their minds and decided to move-out of the rental unit as request by the Landlord.

Both parties agreed that the Tenants moved out of the rental unit on March 31, 2021, in accordance with the Landlord's Notice to end the tenancy. The parties also agreed that the Tenants had paid the full rent up until the end of their tenancy, on March 31, 2021.

The Tenants testified that they are seeking to collect the compensation due to them pursuant to section 51 of the *Act*, the equivalent of one month's rent in the amount of \$900.00, due to the Landlord's ending their tenancy for the Landlord's personal use of the property.

The Landlord agreed that the one-month rent, in the amount of \$900.00, is due to the Tenants.

The Tenants testified that they had not been served all four pages of the Two-Month Notice to end tenancy issued by the Landlord.

The Landlord agreed that they did not serve the full four pages of the Notice to the Tenants, then submitted that if the Notice had not been served in its entirety, the Notice was not valid and that they should not be required to pay the required compensation due under section 51 of the *Act*.

## Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, I accept the agreed-upon testimony of these parties that this tenancy ended due to the Landlord issuing a Notice to end tenancy pursuant to section 49 of the *Act*.

Section 51 of the legislation states:

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

**51 (1)** *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

As this tenancy ended in accordance with a notice issued pursuant to section 49 of the *Act*, I find that these Tenants are entitled to the compensation specified in section 51 of the *Act*.

I acknowledge the Landlord's argument regarding the number of pages contained in the Notice served to the Tenants. The Landlord argued that the compensation should not be due, as they did not serve all four pages of the Notice to end tenancy to the Tenants. After considering the Landlord's argument on this matter, I find that the missing pages of this Notice to be insufficient grounds to wave the Landlord's responsibility to pay the above compensation due under the *Act*. In this case, the Landlord agreed that it was their intent was to end this tenancy pursuant to section 49 of the *Act* and that they agreed they did serve the Tenants with the first two pages of the required four-page notice. Although the service of the full four pages of this document is normally required, I find the Landlord's intent was clear with the service of the first two pages of that notice and that the Tenants complied, in good faith, with the Landlord's Notice when they moved out of the rental unit. Additionally, I find that the *Act* places the responsibility on the Landlord to serve this Notice in its entirety, the failure of the Landlord to have done this created a breach of the *Act* by the Landlord, not the Tenant's. Breach of the *Act* are resolved against the one who committed the breach, and in this case, that is the Landlord. Overall, I find that it would be a miscarriage of justice to allow the Landlord, who failed to serve the full required document as required, to hide behind this technicality, to absolve their requirement to pay the compensation due to these Tenants under the *Act*.

Accordingly, pursuant to section 51(1) of the *Act*, I find that the Tenants have successfully proven they are entitled to compensation equivalent to one month's rent. Therefore, I grant the Tenants a monetary order in the amount of \$9000.00, consisting of one month's rent compensation.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I grant the Tenants a Monetary Order in the amount of \$1,000.00. The Tenants are 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: April 14, 2021

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Residential Tenancy Branch