



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC FFT

### Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by their agent JH (the "Landlord"). Counsel for the tenants primarily spoke on their behalf.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials. Based on the testimonies I find each party duly served with the respective materials in accordance with sections 88 and 89 of the *Act*.

While the tenants confirmed they received all of the landlord's materials, they said that some of the materials was not received within the timelines set in the Residential Tenancy Rules of Procedure. The landlord did not provide cogent explanation of why these materials could not have been served by the timelines set in the Rules with their other materials. In accordance with Rule 3.17 as I find that admitting evidence that was served after the date specified in the Rules may be prejudicial to the tenants and result in a breach of the principles of natural justice I exclude those pieces of evidence served by the landlord outside of the timeline required.

At the outset of the hearing the tenants said there was an arithmetic error in calculating the amount of their monetary claim. As correcting a calculation error is reasonably foreseeable, pursuant to section 64(3)(c) of the Act and Rule 4.2 of the Rules of Procedure I amend the monetary amount of the application.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover their filing fee from the landlord?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. The monthly rent for this periodic tenancy was \$2,240.00. The rental unit is a detached house in a residential neighborhood. The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use dated March 22, 2020. The reason provided on the notice for the tenancy to end is that the landlord or a close family member intends to occupy the rental unit. There is a lengthy history of litigation between the parties including applications from both parties as recorded in earlier decisions under the file numbers on the first page of this decision. There was a hearing on May 28, 2020 pertaining to the tenants' application to cancel the 2 Month Notice. The presiding arbitrator upheld the 2 Month Notice and issued an Order of Possession effective July 31, 2020. The tenancy ended in accordance with the Order.

The tenants believe that the landlord has not occupied the rental unit as they stated they would in the 2 Month Notice. The tenants say that the landlord did not occupy the rental unit within a reasonable time after the tenancy ended or at all and did not occupy the rental unit for at least 6 months or at all.

The tenants called as a witness PP who is the next-door neighbor to the rental property. PP provided a written statement, audio recording and gave testimony that they have not observed the landlord residing in the rental unit, have only occasionally observed the landlord attending at the rental unit to work on the property and have not observed signs of occupation such as vehicles on the property or lights in the evening.

At the hearing the tenants gave names of other potential witnesses they said were available, but no additional witnesses were called.

The tenants submitted into documentary evidence a report from a private investigator who conducted surveillance on the rental unit and other addresses over a period of two days in December 2020 and concluded that the landlord did not move into the rental unit.

The tenants have also submitted correspondence from other neighbors in support of their position that the landlord has not moved into the rental unit accompanied by some photographs of the property.

The landlord submits that they moved into the rental unit in August 2020 and have occupied the suite as their primary residence since that time. The landlord submitted into evidence their government issued identification, utility bills, and correspondence addressed to them at the rental address. In addition, the landlord submitted some correspondence from former family members, roommates and their family physician stating that they believe the landlord is residing at the rental unit.

The landlord said that the rental unit is occupied by the landlord who, due to medical issues, has primarily been residing quietly in the property without engaging in activities or interaction with neighbors. The landlord suggests that the rental unit is a detached home with reasonable privacy from neighbors so their activities inside the home are not visible.

The tenants submit that little weight should be placed on the landlord's evidence as all of the witnesses who provide written statements attesting that they have observed the landlord residing at the rental unit have a personal relationship with the landlord. The tenants also suggest that the address found on identification and utility bills should be given little weight as it is open for anyone to provide a mailing address and it is not conclusive evidence of the landlord's residence.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has

been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51(2) of the *Act* states that a landlord must pay the tenant an amount that is equivalent to 12 times the monthly rent payable under the tenancy agreement if:

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
- (b) the rental unit is not used for that stated purpose for at least 6 months duration, beginning within a reasonable period after the effective date of the notice,

In the 2 Month Notice of March 22, 2020, the landlord indicated that the landlord or a close family member, intends to occupy the rental unit. The tenants submit that the landlord did not accomplish this stated purpose and the rental property is vacant. The landlord's position is that they moved into the rental unit as of August 2020 and have been residing there as their primary residence thereafter.

Based on the totality of the evidence submitted by the parties, including the testimonies, documentary materials and recordings, I am satisfied on a balance of probabilities that the landlord has accomplished their stated purpose and occupies the rental unit. I find that the landlord has submitted a preponderance of evidence in support of their position that they occupy the rental unit including government issued identification, banking information and correspondence from former family members, roommates and family physicians. While the tenants submit that little weight should be placed on these materials as the writers of the correspondence have a cordial relationship with the landlord and an account holder can request utility invoices to be mailed to any address they choose, I find the preponderance of consistent evidence from various sources to be persuasive.

The tenants primarily rely upon the testimony of their witness PP who resides in an adjoining property. While the witness provided cogent, reasonable testimony regarding what they have observed, I do not find their conclusion that the rental unit is unoccupied to be supported in the evidence. Simply because the neighbors do not observe the landlord on or about the rental property consistently does not inevitably lead to the conclusion that the rental unit is abandoned and unoccupied. I find the landlord's explanation that they quietly occupy the rental property with the curtains closed and venture outside rarely to be believable, reasonable and consistent with the evidence. I

find it reasonable that a single detached property would afford privacy to prevent the landlord from being observed from a neighboring property.

I find the report prepared for the tenants by a private investigation firm to be of little assistance. The report concludes that the landlord does not reside at the rental address based on two consecutive days of surveillance, most hours spent at an address other than the rental address. I do not find the conclusion reached in the report to be particularly convincing or believable.

I find that taken in its entirety the evidence of the landlord that they have been occupying the rental unit as their primary residence since August 2020 to be reasonable, likely and supported in the evidentiary materials. Consequently, I find that the tenants have not demonstrated a basis for a monetary award and dismiss the application.

### Conclusion

The tenants' application is dismissed in its entirety 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: May 26, 2021

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Residential Tenancy Branch