



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, MNSD, FFT**

Introduction

This hearing is a continuation of one which began on December 11, 2020 and continued on April 9, 2021 when it was adjourned again to today. The hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The lawyer DV attended for the landlord. The tenants attended. Each party called their final witnesses and concluded the presentation of their respective submissions.

The landlord called the witnesses RR and GA who provided affirmed testimony. The landlord provided affirmed testimony.

The tenants called the witnesses BA and MQ who provided affirmed testimony. The tenants provided affirmed testimony.

I had requested that the parties submit a 1-page summary of their respective positions. Each party did so and provided a copy to the other party. No issues of service were raised.

Preliminary Issue

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the parties' submissions and arguments are reproduced here. The lengthy hearing included divergent perspectives, each party calling several witnesses, and both submitting many documents. Only selected, relevant and important aspects of the claims, the facts and my findings are set out below.

The preliminary issue is whether the tenants filed their application within two years.

Section 60 of the Act states as follows (emphasis added):

Latest time application for dispute resolution can be made

60 (1) *If this Act does not state a time by which an application for dispute resolution must be made, **it must be made within 2 years of the date that the tenancy to which the matter relates ends** or is assigned.*

(2) *Despite the Limitation Act, if an application for dispute resolution is not made within the 2 year period, **a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes** except as provided in subsection (3).*

(3) *If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.*

The parties agreed the tenants rented a unit from the landlords for \$680.00 a month and provided a security deposit at the start of the tenancy of \$300.00. The tenancy started on May 6, 2015.

The tenants testified as follows. They moved out on September 1, 2016. They submitted the current Application on August 28, 2018 within two years.

The landlord testified that the tenants did not move out on September 1, 2016 but on

July 31, 2018 The landlord argued that, as the tenants applied for dispute resolution on August 31, 2020 more than two years have passed since the tenancy ended. Pursuant to section 60 (2) of the Act, the tenants' claims ceased to exist on July 31, 2020.

Each party called witnesses who provided support for their version of events.

One of the witnesses called by the landlord was RR. The landlord testified that RR moved into the unit on August 15, 2018. RR confirmed the move-in date in the testimony. The landlord also submitted a copy of the tenancy agreement between the landlord and RR signed August 15, 2018 as supporting documentary evidence for RR's testimony.

When the tenant and the landlord give differing versions of events, the credibility of the parties must be considered. I found the landlord to be well-prepared and believable. I found the landlord's evidence in its totality to be credible, especially the testimony of RR accompanied by the tenancy agreement between RR and the landlord which was supported by several other witnesses. I found the tenant did not provide a convincing or plausible narrative. I prefer the landlord's testimony as it was also well supported by evidence. Where the parties' evidence conflicts, I prefer the landlord's version.

After a review of the evidence, I find that the tenancy ended on July 31, 2018. I therefore find the tenants' claim was filed outside the 2-year period.

Accordingly, the tenants' claims ceased to exist before they brought the current application.

Therefore, I dismiss the tenants' application 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: July 30, 2021

Residential Tenancy Branch