



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL, MNRL-S

### Introduction

This hearing was convened by way of conference call concerning an amended application made by the landlords seeking an Order of Possession for cause; a monetary order for unpaid rent or utilities; and for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit.

Both landlords and the tenant attended the hearing, and the landlords were assisted by Legal Counsel. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and the evidence and testimony of the parties that are relevant to this application is considered in this Decision.

### Issue(s) to be Decided

- Have the landlords established that the Two Month Notice to End Tenancy for Landlord's Use of Property was given in accordance with the *Residential Tenancy Act*?
- Have the landlords established a monetary claim as against the tenant for unpaid rent?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The first landlord** (PB) testified that this tenancy was to begin on September 1, 2020, however the tenant wanted to move in on August 15, 2021, and pay rent on the 1<sup>st</sup> day

of each month. A copy of the tenancy agreement has been provided for this hearing indicating that the tenancy began on September 1, 2020. The landlord made arrangements with the previous tenant who was moving out anyway, and the tenant moved in on August 15, 2021 and paid ½ a month's rent for August. A new tenancy agreement was made with the tenant at the time.

The tenancy agreement provided by the landlords specifies rent in the amount of \$1,250.00 per month, but does not indicate a date that rent is payable. However, at the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$625.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a basement suite and the landlords reside in the upper level of the home.

On April 27, 2021 the landlords served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice) by taping all 4 pages to the door of the rental unit, with the other landlord and another witness present. A Proof of Service document has been provided for this hearing which is signed by the other landlord.

The tenant returned 2 pages of the Notice to the landlord along with a 3-page letter stating that the landlord did it wrong, that it was not right and the tenant wasn't going to accept it. The landlord was confused about the form, and the landlord took those pages and put a mark in the box for landlord's use and put those 2 pages back to the tenant's door. Another Proof of Service document has also been provided for this hearing. A copy of the Notice has also been provided and it is dated April 27, 2021 and contains an effective date of vacancy of June 30, 2021. The reason for issuing it states: The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse), but none of the options of who will occupy the unit have been checked. The landlord testified that the form was confusing and she thought that the first box checked off was enough. Then the tenant said that the landlord didn't do it right, so the landlord checked off the first circle, initialed it and returned it to the tenant on May 1, 2021, the same day the landlord received the tenant's letter.

The landlords owned property in Arizona and sold it in August because the landlords developed health issues and decided to no longer winter away from home. The landlords want to recreate a little bit of what they had away from home, such as an exercise room and craft room and need the space. Currently, everything is in boxes, stacked quite high, as well as a treadmill and a universal gym that's all apart, and need the space.

The landlords have not been served with an Application for Dispute Resolution from the tenant indicating that the tenant disputed the Notice.

In April, 2021 the tenant only paid \$800.00 with a letter stating that because the fireplace wasn't working, the tenant was withholding \$50.00 per month from the beginning of the tenancy, and deducted \$450.00 from April's rent. There is no order from the Residential Tenancy Branch allowing any deduction.

When the tenant paid rent in June, 2021 the landlord gave a receipt indicating that the money was received for use and occupancy only.

**The second landlord** (VB) testified that there were 2 copies of the tenancy agreement, and the second page has been altered from the original. The tenant wanted to change the tenancy agreement because she didn't want rent to be due on the 15<sup>th</sup> of the month, so it was changed, and that supersedes the original tenancy agreement.

The landlord witnessed the tenant sign the tenancy agreement on August 23, 2020.

**The tenant** testified that she gave the landlord a letter because the Notice was not served correctly; there were only 2 pages taped to the door. The tenant also disputes that anything else was served, or the tenant would have disputed it.

The parties had attended a hearing on April 6, 2021 concerning a One Month Notice to End Tenancy for Cause, and the result was in the tenant's favour. A dispute between the parties has been on-going about the schedule the tenant keeps. Within 3 months, the landlord has told the tenant 3 times that the tenancy is not working, and that the tenant is not allowed guests past midnight. The tenant lives alone and does not sleep throughout the night but wakes up and has odd hours, but doesn't have parties or people over. The tenant does not go to bed at 9:00 like the landlords do. In the past 2 weeks the only visitor has been the tenant's son who went to the rental unit with the tenant after shopping at Walmart. The store closed at 11:00 p.m. so they probably arrived at midnight. He left after helping unload groceries. The tenant rarely has guests over.

The tenant also disputes the landlord's testimony that the property in Arizona sold in August; the evidence shows that the sale was June 30, prior to renting to the tenant. The landlords knew about the sale prior to entering into a tenancy agreement with the tenant and were aware of their belongings. The landlords have not acted in good faith; it's a large house and the landlords have 2 carports, one of which is  $\frac{3}{4}$  empty.

The tenant does not deny withholding \$450.00 rent without an order from the Residential Tenancy Branch. The Arbitrator in the April 6, 2021 hearing didn't deal with that, only the One Month Notice to End Tenancy for Cause. However, that was part of the condition inspection report; the fireplace was to be fixed and has still not been addressed.

#### SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL:

Section 55(4) of the *Act* states that if the tenant does not dispute a Notice, without any further process an Order of Possession should be granted. The landlords served the Notice and have indicated that they intend to do what they say in the Notice. The landlord has tried to notify the tenant and work with the tenant, and the landlords have acted in good faith.

The tenant has withheld rent contrary to the *Act* and the landlords are entitled to recovery of it as well as the filing fee.

#### SUBMISSIONS OF THE TENANT:

Since the hearing on April 6, 2021 the landlords have been more aggressive and hostile and taped a notice to end the tenancy to the door of the rental unit 3 weeks after that. Only 2 pages were served and it was not filled in correctly, and the tenant didn't receive anything after that. The tenant also submits that she didn't get 4 pages to begin with.

#### Analysis

Firstly, there is no question that the tenant withheld rent in the amount of \$450.00 without an order from the Residential Tenancy Branch or any other right to do so, and I find that the landlords have established that amount.

With respect to the notice to end the tenancy for landlord's use of property, I accept the testimony of the first landlord that she found the form to be confusing, and when 2 pages of it were returned by the tenant, the landlord amended it by checking off a box and then returning the 2 pages on May 1, 2021. That means that the landlord served the Notice on May 1, 2021. However, if the landlord amended the Notice, the landlord ought to have re-dated it and returned all 4 pages of the Notice to the tenant, but didn't do so. The *Act* specifies that the landlord must serve it before the date rent is payable, and that affects the effective date of vacancy.

I find that the landlord has not served the Notice properly, and I decline to issue an Order of Possession.

Since the landlords have been partially successful with the application, the landlords are entitled to recovery of the \$100.00 filing fee.

The landlords have also applied for an order permitting the landlords to keep the security deposit, and since the landlords are not entitled to an Order of Possession the tenancy continues until ended in accordance with the law. Therefore, I dismiss the landlord's application to keep the security deposit with leave to reapply.

### Conclusion

For the reasons set out above, the landlords' application for an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property dated April 27, 2021 is hereby dismissed.

The landlords' application for an order permitting the landlords to keep the security deposit is hereby dismissed with leave to reapply.

I hereby grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$550.00.

This order is final and binding and may be enforced.

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 21, 2021

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Residential Tenancy Branch