



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL, MNDL, MNDCL, FFL; MNETC, FFT

### Introduction

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

- a monetary order of \$34,897.55 for unpaid rent, damage to the rental unit, and for compensation under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the \$100.00 filing fee paid for his application, pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- a monetary order of \$24,000.00 for compensation related to a notice to end tenancy for landlord's use of property, pursuant to section 51; and
- authorization to recover the \$100.00 filing fee paid for their application, pursuant to section 72.

The "female tenant" did not attend this hearing, which lasted approximately 25 minutes. The landlord and the male tenant ("tenant") 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 landlord intended to call a witness, who was excluded from the outset of this hearing, and did not return to testify.

This hearing began at 1:30 p.m. and ended at 1:55 p.m. The landlord exited the hearing at the beginning, and called back three times, because he was unable to hear properly from his telephone. He confirmed after calling back in the third time that he could hear properly. I did not discuss any evidence with the tenant in the landlord's absence.

The landlord confirmed his name, spelling, and provided his email address for me to send this decision to him after the hearing. He said that he was the co-owner of the rental unit, together with his wife. He said that he had permission to represent his wife at this hearing.

The tenant confirmed his name, spelling and provided an email address for me to send this decision to both tenants after the hearing. He stated that he had permission to represent the female tenant at this hearing (collectively “tenants”).

At the outset of this hearing, I informed both parties that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure*. The landlord and tenant both affirmed, under oath, that they would not record this hearing.

I explained the hearing process to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

Both parties confirmed receipt of the other party’s application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party’s application.

The tenant stated that although he received the landlord’s application late on January 5, 2022, the week before this hearing on January 14, 2022, he was ready to proceed with this hearing. He confirmed that he wanted to deal with the landlord’s application, and the tenants had a chance to respond to it with evidence.

#### Preliminary Issue – Dismissal of Tenants’ Application

At the outset of this hearing, the tenant confirmed that the tenants did not receive a Two Month Notice to End Tenancy for Landlord’s Use of Property (“2 Month Notice”) or Four Months’ Notice to End Tenancy for Demolition or Conversion of a Rental Unit (“4 Month Notice”) from the landlord in the approved RTB forms. He said that the tenants only received a letter from the landlord and moved out pursuant to it. The tenants provided a copy of the letter, dated December 27, 2020.

The tenant confirmed that the tenants seek compensation under section 51(2) of the *Act* for twelve months’ rent of \$2,000.00, totalling \$24,000.00, plus the \$100.00 filing fee.

In the online RTB details of their application, the tenants claimed that the landlord gave them a letter to move out, so the landlord could move into the rental unit, and the landlord demolished the rental unit instead. In their evidence submitted for this hearing, the tenant stated:

*"I understand that I should have done my due diligence to ensure that the landlord gave the proper forms, however, that being said, my family and I acted in good faith by moving out on time, the landlord did not act in good faith by his actions."*

Sections 49, 51 and 52 of the Act, state in part (my emphasis added):

49     (2) *Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be*

          (a) *not earlier than 2 months after the date the tenant receives the notice,*

          (b) *for a purpose referred to in subsection (6) by giving notice to end the tenancy effective on a date that must be*

              (i) *not earlier than 4 months after the date the tenant receives the notice,*

...

**(7) A notice under this section must comply with section 52 [form and content of notice to end tenancy].**

51     (2) *Subject to subsection (3), **the landlord** or, if applicable, the purchaser who asked the landlord **to give the notice must pay the tenant**, in addition to the amount payable under subsection (1), an amount that is the equivalent of **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.*

52     **In order to be effective, a notice to end a tenancy must be in writing and must**  
              **(e) when given by a landlord, be in the approved form.**

Since the tenants did not receive a 2 Month Notice or a 4 Month Notice in the approved RTB forms, from the landlord, as required by sections 49 and 52 of the *Act*, I find that the tenants are not entitled to monetary compensation under section 51 of the *Act*. A letter from the landlord to the tenants is not an approved RTB form under the *Act*.

Accordingly, the tenants' application to recover twelve months rent compensation of \$24,000.00, as per section 51 of the *Act*, is dismissed without leave to reapply.

As the tenants were unsuccessful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord. This claim is also dismissed without leave to reapply.

During this hearing, I notified the tenant about my decision verbally. The tenant was upset and stated that he disagreed with my decision. The tenant asked questions about my decision, which I answered. The tenant confirmed his understanding of my decision.

**Preliminary Issue – Dismissal of Landlord's Application**

At the outset of this hearing, the landlord confirmed that he was upset that the two tenants filed an application against him, so he filed an application against them on December 19, 2021.

The landlord stated that the tenants caused damages to the rental unit and he provided two quotes for damages, as evidence for this hearing. He claimed that he provided one quote for \$29,050.00 for cleaning and renovations, and one quote for \$1,400.00 to replace a hot water tank, totalling \$30,450.00. He said that he did not have the above work done at the rental unit, nor did he pay for the quotes or for any other work to be done to the rental unit. He said that the house was demolished in April 2021, so he was not planning to complete any of the above work to the rental unit.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord 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 tenants 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 landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the landlord does not have proof of any losses that he paid for or will pay for in the future, as a result of damages that he said the tenants caused. The landlord has failed part 3 of the above test. The landlord did not testify about any unpaid rent or other monetary claims against the tenants, aside from the damages of \$30,450.00, as noted above. Accordingly, the landlord's application for \$34,897.55 is dismissed without leave to reapply.

As the landlord was unsuccessful in his application, I find that he is not entitled to recover the \$100.00 filing fee from the tenants. This claim is also dismissed without leave to reapply.

During this hearing, I notified the landlord about my decision verbally. He confirmed his understanding of same.

### Conclusion

Both parties' applications are dismissed in their 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: January 14, 2022

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Residential Tenancy Branch