



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, MNDCT, FFT

Introduction

On September 27, 2021, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "*Act*"), seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On October 6, 2021, the Tenants amended their Application seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Act*.

Both Tenants attended the hearing. Both Landlords attended the hearing as well, with R.S. attending as counsel for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties, with the exception of R.S., provided a solemn affirmation.

Service of documents was discussed, and I was satisfied that the Tenants' Notice of Hearing package and Amendment were duly served upon the Landlords. The Tenants' evidence, with the exception of evidence submitted to the Residential Tenancy Branch on February 6, 2022, will be accepted and considered when rendering this Decision.

The Landlords' evidence will also be accepted and considered when rendering this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlords' Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?
- Are the Tenants entitled to an Order to comply?
- Are the Tenants entitled to a Monetary Order for compensation?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 13, 2021 and the tenancy ended on December 31, 2021 when the Tenants gave up vacant possession of the rental unit. Rent was established at \$1,625.00 per month and was due on the first day of each month. A security deposit of \$812.50 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The parties also agreed that the Notice was served to the Tenants by being placed in the Tenants' mailbox on September 21, 2021. The reason the Landlords served the Notice is because "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)" and that "The child of the landlord or the landlord's spouse" would be occupying the rental unit. The Notice indicated that the effective end date of the tenancy was November 30, 2021.

Given that the Tenants have given up vacant possession of the rental unit on December 31, 2021, the issues pertaining to a cancellation of the Notice and an Order to comply are moot. As such, this hearing primarily focussed on the Tenants' claims for compensation.

Tenant S.A. advised that they were seeking compensation in the amount of **\$1,625.00** because the Landlords served them the Notice and they were entitled to this pursuant to Section 51 of the *Act*. He submitted that they gave their 10 day's written notice to end their tenancy on or around December 19, 2021, that was effective for December 31, 2021. He stated that they paid rent up until the time they gave up vacant possession of the rental unit and that the Landlords have not provided them with this compensation as owed.

R.S. submitted that the Tenants' notice would have been effective for the end of January 2022 and that the Tenants could have stayed up until this point. As such, the Tenants could have withheld January 2022 rent as their compensation.

Landlord A.D. confirmed that they received the Tenants' 10 day's written notice to end their tenancy on December 20, 2021 and that it did not give them much time. She also acknowledged that the Tenants paid rent up until the end of December 2021 and that they have not compensated the Tenants in the amount of one month's rent.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Tenants' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or

loss”, and that “the value of the damage or loss is established by the evidence provided.”

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

Section 50 of the *Act* states that the Tenants may give 10 days’ written notice to end the tenancy early after being served the Notice.

Regarding the Tenants’ claim for one month’s compensation owed to them when they were served the Notice, I find it important to note that Section 51 of the *Act* reads in part as follows:

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.*

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

Given that the Tenants had disputed the Notice, the tenancy would continue until decided upon at the scheduled hearing. However, the tenancy ended prior to the hearing. Despite this, since the Tenants were served the Notice, I am satisfied that they were still entitled to give 10 day’s written notice to end their tenancy. There is no requirement in the *Act* which would require them to give one, whole month’s notice to end their tenancy in these circumstances.

As the Landlords gave this Notice to the Tenants, clearly they wanted possession of the rental unit back as soon as possible. It would not make sense for them to expect that the Tenants’ notice should have been effective for the end of January 2022. I reject R.S.’s argument as this would be contrary to the Landlords’ desire to gain possession of the rental unit for their own use.

Furthermore, given the consistent and undisputed that the Landlords served this Notice, the Landlords are required to compensate the Tenants in the amount of one month’s rent owed under Section 51 of the *Act*. As the Tenants were entitled to the one month’s

compensation after being served this Notice, and as the Landlords have not compensated them in this amount as required by law, I grant the Tenants a monetary award in the amount of **\$1,625.00**.

As the Tenants were successful in this Application, I find that the Tenants are entitled to recover the \$100.00 filing fee.

Pursuant to Sections 51, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlords to the Tenants

Item	Amount
One month's rent compensation	\$1,625.00
Filing fee	\$100.00
Total Monetary Award	\$1,725.00

Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$1,725.00** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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: February 7, 2022

Residential Tenancy Branch