



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNETC, MNDCT, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking monetary compensation related to a Notice to end the tenancy for the landlord's use of the property; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

Both tenants and the landlord attended the hearing, and each gave affirmed testimony. The parties 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 is considered in this Decision.

### Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlord related to a Notice to end the tenancy for landlord's use of property?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for damages suffered for breach of the tenancy agreement and moving expenses?

### Background and Evidence

**The first tenant** (LV) testified that a tenancy agreement was signed on August 14, 2020 for a fixed-term tenancy to commence on August 25, 2020 and expiring on April 30,

2021. The rental unit is a basement suite, and the landlord resides in the upper level of the home.

However, the tenants did not move into the rental unit. The tenants each paid half of the security deposit to the landlord by e-transfers, which were not rejected, but expired; the landlord did not accept them. The tenant signed the tenancy agreement and returned it to the landlord on August 15, 2020, and received a response from the landlord the same day. A copy of a portion of the tenancy agreement has been provided for this hearing, which names 1 tenant only (LV) and is signed by the tenant (LV) and the landlord on August 14, 2020. It specifies rent in the amount of \$1,650.00 payable on the 1<sup>st</sup> day of each month and a security deposit in the amount of \$825.00.

On August 19, 2020 the landlord reached out asking for the first month's rent to secure the tenancy and the tenant replied the following day stating that September's rent money would be sent closer to the beginning of September. The landlord replied in all caps, that the landlord wanted the money NOW. The landlord then reached out to the other tenant (MY) by phone saying that the tenant (LV) had been disrespectful and the tenancy was ending, even though the tenant replied that the tenant had not intended to sound rude. No notice to end the tenancy was given, just the verbal phone call, and the tenant didn't know that the lease was cancelled until told by the co-tenant.

On September 1, 2020 the tenant arrived to the rental unit and found someone else was living there; the landlord had already re-rented. The tenant applied for an Order of Possession and an expedited hearing, but in the hearing the landlord said that the landlord sought out another tenant who was already living there. The Arbitrator didn't make a definitive Decision and suggested this application, otherwise someone else would be displaced. The tenants withdrew the application on the advice of the Arbitrator, and the tenant agreed after the landlord had confirmed that someone was living there.

Since the tenants could not claim the rental unit, they decided to return to their own home towns; it was tough to find accommodation in the City at that time. The tenant moved to Edmonton, and the co-tenant to Vancouver Island, although they had plans to be roommates.

The tenant researched Section 51 of the *Residential Tenancy Act*, which states that to terminate a lease requires 2 months notice and 1 month of rent. The tenants should still be allowed compensation, and the tenants claim 12 months rent and the 1 month of compensation. No reason was given to end the tenancy. It was very stressful for both tenants, being treated like they don't matter.

**The second tenant** (MY) testified that he sent an email to the landlord following a phone call, between the 10<sup>th</sup> and 28<sup>th</sup> of August, 2020. The email stated that the tenant (MY) wanted to clear things up after the call about terminating the tenancy. It said that the parties have a signed tenancy agreement. The landlord responded that for a contract to be valid it had to be signed by all parties, and therefore there was no contract and the landlord does not expect to hear from the tenant again.

The tenant (MY) had signed the tenancy agreement in person at the rental home, but did not receive a copy. Since the other tenant (LV0) was in Alberta, he emailed it, which was signed by the landlord. The other tenant signed it and sent it to the landlord and forwarded a copy of the email to the tenant (MY). The copy provided for this hearing is the copy that the other tenant emailed to the landlord because the tenants had signed them separately.

The tenant also testified that on or about August 28, 2021 he sent an email to the landlord with a copy to the other tenant wherein he expressed that the tenancy agreement was signed, the security deposit was sent, and the tenants were still legally entitled to occupy the rental unit. The reply from the landlord stated that the tenancy would only be for the tenant (MY) and not the tenant (LV).

The tenants arrived at the rental unit on September 1, 2021, and had to re-locate again.

**The landlord** testified that the tenant (LV) wouldn't sign the tenancy agreement. A copy of a portion of the tenancy agreement has been provided by the landlord for this hearing, which names 1 tenant (LV) and is signed by the landlord only on August 14, 2020. The landlord needed that to establish that the tenants were under a contract. The landlord intended to get the tenants to sign it when they arrived on August 25, 2021 and the landlord told the tenants they couldn't move in prior to that. The tenant (MY) signed it in the landlord's presence, but the landlord needed to secure a tenancy and told the tenants they could not move in because the tenant (LV) had not signed it. By not signing it, the landlord was afraid there would be no tenants, which the landlord depended immensely on. The landlord thought the tenants were just playing her, and the landlord needed the assurance of the money coming in. If the tenant had signed it, there would be no problems.

The landlord testified that she definitely did not get a copy signed by the tenant (LV) and kept telling the tenants that.

The landlord rented to another tenant for September 1, 2020 for \$1,650.00, who vacated at the end of June, 2021.

### Analysis

Firstly, the *Residential Tenancy Act* speaks of compensation but is very specific that it applies only to service of a Two Month Notice to End Tenancy for Landlord's Use of Property. Where a landlord serves such a Notice, the landlord must provide 1 month's rent to the tenant, and it must contain a reason. If the landlord fails to achieve that stated purpose, the landlord may be liable for further compensation equivalent to 12 months' rent. In this case, the landlord did not serve a Two Month Notice to End Tenancy for Landlord's Use of Property, and therefore those laws about compensation do not apply, and I dismiss the tenants' claim for that compensation.

With respect to the tenants' claim for monetary compensation for damage or loss, the onus is on the tenants to establish that they suffered a loss as a result of the landlord's failure to comply with the *Act* or the tenancy agreement, and what efforts the tenants made to mitigate any damage or loss suffered.

I have reviewed all of the evidence, and I note that the tenancy agreements provided by each of the parties appear to be identical except for the signatures, and are both missing pages. Both name the tenant (LV), and the one provided by the landlord is signed only by the landlord. However the landlord and the tenant (MY) testified that he signed it in the landlord's presence. No one has provided a copy of that, but that is not in dispute. I accept that the tenant (MY) signed it in the landlord's presence, but that person is not named as a tenant in the agreement itself. A person may not enter into a contract with another person on behalf of another person without express written permission to do so.

The tenant (LV) testified that a signed copy was sent to the landlord by email, but has not provided a Read Receipt, or a copy of any acknowledgement to the landlord, and the landlord disputes ever receiving it, and did not accept a security deposit.

In the circumstances, I am not satisfied that the tenants have established that the tenants are entitled to compensation as a result of the landlord's failure to comply with the *Residential Tenancy Act* or the tenancy agreement, and I dismiss the tenants' claim.

Since the tenants have not been successful with the application, the tenants are not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the tenants' application is hereby 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: February 15, 2022

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Residential Tenancy Branch