



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      OLC, FFT, MNDCT, CNC

### **Introduction**

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on September 06, 2021 (the “Application”). The Tenant applied as follows:

- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- For compensation for monetary loss or other money owed
- To dispute a One Month Notice to End Tenancy for Cause
- To recover the filing fee

This matter came before me January 18, 2022 and was adjourned. An Interim Decision was issued January 19, 2022. This decision should be read with the Interim Decision.

The Tenant and A.I. appeared at the reconvened hearing. The Landlord and J.P. appeared at the reconvened hearing 26 minutes late.

I explained the hearing process to the Tenant who did not have questions when asked. I told the Tenant they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant provided affirmed testimony.

### **Preliminary Issue - Withdrawals**

The Tenant advised that they moved out of the rental unit January 31, 2022. Given this, the Tenant withdrew the request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement and the dispute of a One Month Notice to End

Tenancy for Cause. I allowed the Tenant to withdraw these requests given the Tenant had moved out of the rental unit and therefore the issues were a moot point.

### **Preliminary Issue - Amendments**

The Tenant filed two Amendments to the Application. The first Amendment filed November 29, 2021 added a claim for compensation of \$2,861.60 as well as the dispute of the One Month Notice to End Tenancy for Cause. The second Amendment filed December 17, 2021 changed the request for compensation to \$12,711.43. The Tenant also submitted a third Amendment; however, this was only uploaded as evidence, it was not filed with the RTB as an amendment to the Application. Given the third Amendment was not filed with the RTB as required by rule 4.1 of the Rules, I told the Tenant I would not consider it. The Landlord acknowledged receipt of the second Amendment filed December 17, 2021 changing the request for compensation to \$12,711.43 and therefore I considered this Amendment.

### **Preliminary Issue - Service**

I stated as follows in the Interim Decision:

Given there was an issue with service of the Tenant's evidence, the Tenant is ordered to re-serve the Landlord with (1) a table of contents outlining their evidence and (2) all evidence referred to in the table of contents. The Tenant can provide this to the Landlord by email at the Landlord's email address noted on the Application because the Landlord confirmed this email address at the hearing. The Tenant is ordered to provide the table of contents and all evidence to the Landlord no later than January 27, 2022. The Tenant is permitted to include additional evidence in the table of contents and evidence package. The Tenant is ordered to submit a copy of the email sent to the Landlord to the RTB prior to the hearing. The Tenant must also submit any additional evidence they are relying on to the RTB. The Landlord is permitted to submit further evidence; however, this must be served on the Tenant and submitted to the RTB no later than February 03, 2022.

The Tenant testified that they complied with the above direction and I accept the undisputed testimony of the Tenant that they did so. I note that the Tenant also submitted documentary evidence of service. Given this and the Interim Decision, I find there are no service issues in this matter.

The Tenant was given an opportunity to present relevant evidence and make relevant submissions. The Landlord joined the hearing at 1:56 p.m. and was also given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the parties as well as the documentary evidence submitted. I have only referred to the evidence I find relevant in this decision.

### **Issues to be Decided**

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to recover the filing fee?

### **Background and Evidence**

The Tenant outlined the \$12,711.43 compensation request in the second Amendment as follows:

1. Moving costs
2. First four days of September rent
3. Costs associated with preparing the Application such as registered mail costs and printing costs
4. Costs associated with taking two weeks off from work to move

A written tenancy agreement was submitted as evidence. The tenancy started September 01, 2021 and was for a fixed term ending August 31, 2022. Rent was \$2,900.00 per month due on the first day of each month. The Tenants paid a \$1,450.00 security deposit and \$1,450.00 pet damage deposit. The agreement was signed by all three parties. The agreement had an addendum.

The Tenant sought the compensation outlined for the following reasons. The Tenant moved to the rental unit from another province. In September, an issue occurred between the Landlord and Tenant's spouse which the Landlord caused. Further, the Landlord sent the Tenant a "hate message". Given these issues, the Tenant asked to end the tenancy but the Landlord would not agree to this. The Tenant moved to the rental unit and them and their family got settled. The Landlord then issued the Tenant a One Month Notice to End Tenancy for Cause. The Tenant had to move to another rental unit due to the Landlord's actions and incurred costs relating to this.

In relation to the end of the tenancy, the Tenant testified that the Landlord issued the One Month Notice to End Tenancy for Cause with an effective date of December 31, 2021. The Tenant testified that they agreed to move out of the rental unit and requested until the end of January of 2022 to do so.

I asked the Tenant what they are relying on as a breach of the *Residential Tenancy Act* (the “*Act*”), *Residential Tenancy Regulation* (the “*Regulations*”) or the tenancy agreement. The Tenant submitted that the Landlord breached the tenancy agreement by asking the Tenant to move earlier than August 2022. The Tenant acknowledged they agreed to move out of the rental unit pursuant to the One Month Notice to End Tenancy for Cause.

The Landlord disputed that they breached the tenancy agreement and disputed that they are responsible for the Tenant’s moving costs.

The Tenant also sought compensation for four days of rent on the basis that the Landlord did not give the Tenant access to the rental unit until September 04, 2021. The Tenant testified that they agreed to access the rental unit September 02, 2021; however, the Landlord refused to give the Tenant’s spouse the keys to the rental unit and the issue was not resolved until the Tenant arrived from out of province September 04, 2021.

The Landlord testified that it was the Tenant who wanted the keys to the rental unit September 04, 2021. The Landlord disputed that they are responsible for paying the compensation sought.

I have reviewed all of the documentary evidence submitted. The most notable documentary evidence is an email from the Tenant to the Landlord dated September 02, 2021 about the Landlord not letting the Tenant’s spouse into the rental unit as well as text messages between the parties about what occurred on September 02, 2021.

## **Analysis**

Section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

The Tenant seeks compensation for moving costs and costs associated with taking two weeks off from work to move. The Tenant submits that the Landlord breached the tenancy agreement by asking the Tenant to move earlier than August 2022 and issuing the One Month Notice to End Tenancy for Cause (the "Notice").

Although the tenancy was a fixed term tenancy ending August 31, 2022, the Landlord was permitted to issue the Tenant a One Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act*. There is nothing in the *Act* or *Regulations* that prohibited the Landlord from issuing a One Month Notice to End Tenancy for Cause prior to August 31, 2022. Further, the tenancy agreement allowed the Landlord to seek to end the tenancy in accordance with section 47 of the *Act* as set out in term 14(4) of the agreement. This is not to say that the Landlord had grounds to issue the Notice or that it was valid. However, if the Tenant believed the Notice was not valid, the Tenant was required to dispute the Notice in accordance with section 47(4) of the *Act*. It was also open to the Tenant to accept the Notice and move out of the rental unit.

The Tenant did dispute the Notice. However, the Tenant did not continue with the dispute. As stated in the Interim Decision, the Tenant sought to withdraw the dispute of the Notice at the first hearing and advised that they were moving out of the rental unit January 31, 2022. At the reconvened hearing, the Tenant withdrew the dispute of the Notice because the Tenant had vacated the rental unit January 31, 2022. Further, the Tenant acknowledged they agreed to move out of the rental unit pursuant to the Notice and that they did move out of the rental unit.

I do not find that the Landlord breached the *Act, Regulations* or tenancy agreement because the Landlord was permitted to issue the Notice. I find the Tenant accepted the Notice and moved out of the rental unit. It was open to the Tenant to continue with their dispute of the Notice and not move out of the rental unit in which case the Notice may have been cancelled and the tenancy would have continued. However, the Tenant chose to move out of the rental unit January 31, 2022 rather than continuing with the dispute of the Notice. I find it was the Tenant's choice to move out of the rental unit rather than continue with the dispute of the Notice that resulted in the Tenant incurring moving costs and costs associated with taking two weeks off from work to move. It was not a breach by the Landlord that resulted in these costs. Given this, the Tenant is not entitled to compensation for these costs and this request is dismissed without leave to re-apply.

In relation to the request for the equivalent of the first four days of September rent, I am satisfied the Tenant is entitled to this amount. The Landlord was required by the tenancy agreement, which started September 01, 2021, to give the keys to the rental unit to the Tenant or a designated agent such as the Tenant's spouse. The parties disagreed about what occurred on September 02, 2021 when the Landlord and Tenant's spouse met at the rental unit. I find it more likely that the Tenant's version of events is accurate because the communications between the parties, including emails and text messages, tend to support it. I accept that the Landlord did not give the Tenant or Tenant's spouse the keys to the rental unit until September 04, 2021 despite the tenancy starting September 01, 2021. I find the Landlord breached the tenancy agreement by failing to give the Tenant or Tenant's spouse the keys until September 04, 2021. I accept that the Tenant experienced loss as a result of the breach because the Tenant could not occupy the rental unit until September 04, 2021. I find four days of rent to be \$386.66 and I award the Tenant this amount.

The costs associated with preparing the Application, such as registered mail costs and printing costs, are not recoverable in these proceedings and this request is dismissed without leave to re-apply.

Given the Tenant was partially successful in the Application, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is owed \$486.66 and I issue the Tenant a Monetary Order in this amount pursuant to section 67 of the *Act*.

### **Conclusion**

The Tenant is awarded \$486.66 and is issued a Monetary Order in this amount. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it 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 *Act*.

Dated: March 09, 2022

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Residential Tenancy Branch