



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: FFL, OPL, MNDCL-S, OPN  
                             Tenants: CNL

### Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), pursuant to section 49.

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

- an Order of Possession for Landlord's Use of Property, pursuant to sections 49 and 55;
- an Order of Possession pursuant to the tenants' written notice to end tenancy and section 55;
- a Monetary Order for damage or compensation under the Act, pursuant to section 67;
- authorization to retain the tenants' security deposit and pet damage deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

### Preliminary Issue- Amendments

The landlord and tenant A.M.H. testified to the correct legal spelling of their first, middle and last names. The landlord's middle name is present on the landlord's application for dispute resolution but not the tenants' applicaiton. I amend the tenants' application to state the landlord's middle name. Both applications for dispute resolution mis-spell tenant A.M.H.'s middle name, I amend both applications to correctly spell tenant A.M.H.'s middle name. The above amendments are made pursuant to section 64 of the *Act*.

### Preliminary Issue- Dismissal

Both parties agree that the tenants moved out of the subject rental property on February 28, 2022. I therefore dismiss:

- the tenant's application for cancellation of the Two Month Notice to End Tenancy,
- the landlord's application for an Order of Possession for Landlord's Use of Property, and
- the landlord's application for an Order of Possession pursuant to the tenants' written notice to end tenancy,

because the issues are no longer applicable.

### Preliminary Issue Service

Both parties agree that the landlord served each tenant with a copy of the landlord's application for dispute resolution via registered mail in December 2021. I find that the tenants were served in accordance with section 89 of the *Act*.

Both parties agree that the tenants personally served the landlord with a copy of their application for dispute resolution on October 22, 2021. I find that the landlord was served with the tenants' application in accordance with section 89 of the *Act*.

Both parties agree that the tenants were personally served with the landlord's evidence on February 1, 2022. I find that the landlord's evidence was served in accordance with section 88 of the *Act*. Both parties agree that the tenants did not serve the landlord with any evidence. The only evidence provided to the Residential Tenancy Branch by the

tenant was the Two Month Notice, which was also submitted by the landlord. This evidence will be considered because it was also uploaded by the landlord.

### Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation under the Act, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenants' security deposit and pet damage deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2012 and ended on February 28, 2022. Monthly rent in the amount of \$925.00 was payable on the first day of each month. A security deposit of \$437.00 and a pet damage deposit of \$20.00 were paid by the tenants to the landlord. The tenants have not provided the landlord with their forwarding address in writing.

The landlord testified that under the *Act*, she is required to give the tenants one months' free rent because she served them with the Two Month Notice. The landlord testified that she is seeking to have this requirement waived or the tenants pay her one month's rent in the amount of \$925.00 because the tenants disputed the Two Month Notice without cause to do so. The landlord quoted the tenants' application for dispute resolution which states:

[The landlord] had marked down her son is moving in and I understand his girlfriend is moving in too. plus I am asking for 3 months extension on the notice till March 31st, 2022. Nobody is moving over the holidays and it is tough to find a new place that we can afford.

The landlord testified that the above grounds have no merit, and the tenants filed this application to delay their move out date so they should not be entitled to one months' free rent.

Tenant G.J.H. testified that moving over Christmas is a very difficult time and that there was nothing on the market. Tenant G.J.H. testified that he wanted his security deposit returned.

### Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

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

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

I find that the tenants were permitted, under the *Act*, to dispute the Two Month Notice. I find that in disputing the Two Month Notice, the tenants did not breach the *Act*, *Regulation*, or tenancy agreement. Pursuant to Policy Guideline 16, since the tenants

did not breach the *Act*, *Regulation*, or tenancy agreement, the landlord is not entitled to monetary compensation or to have the requirement to provide the tenants with one month's rent under section 49 of the *Act* waived. The landlord's application for a Monetary Order for damage or compensation under the *Act* is therefore dismissed without leave to reapply.

As the landlord's application for dispute resolution was not successful, the landlord is not entitled to recover the \$100.00 filing fee from the tenants or to retain their security deposit, pursuant to section 72 of the *Act*.

Section 88 of the *Act* sets out how documents such as forwarding addresses are to be served:

All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this *Act* to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

Based on the agreed testimony of both parties, I find that the tenants have not served the landlord with their forwarding address in accordance with section 88 of the *Act*.

Section 38 of the *Act* states:

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security

deposit or a pet damage deposit has been extinguished under section 24

(2) *[landlord failure to meet start of tenancy condition report requirements]* or 36

(2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must repay a deposit

(a) in the same way as a document may be served under section 88 (c),

(d) or (f) *[service of documents]*,

(b) by giving the deposit personally to the tenant, or

(c) by using any form of electronic

(i) payment to the tenant, or

(ii) transfer of funds to the tenant.

Pursuant to section 38(1) of the *Act*, the landlord is not required to return the tenants' security deposit to the tenants until the tenants provide the landlord with their forwarding address in writing. Both parties agree that the tenants have not provided the landlord with their forwarding address; therefore, at this time, the landlord is not yet required to return it to the tenants.

The tenants are at liberty to file an application for dispute resolution for the return of their deposit if the landlord does not return it, within 15 days of the landlords' receipt of the tenants' forwarding address in writing. Section 88 of the *Act*, set out above, states how documents such as forwarding addresses should be served.

### Conclusion

The landlord's application for dispute resolution is dismissed without leave to reapply.

The tenants' application for dispute resolution is dismissed 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: March 01, 2022

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Residential Tenancy Branch