



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, RR, LRE, OLC, FFT

### Introduction and Preliminary Matters

On August 28, 2022, the Tenants made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking a rent reduction pursuant to Section 65 of the *Act*, seeking to restrict the Landlords’ right to enter pursuant to Section 70 of 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*.

Both Tenants attended the hearing, and R.D. and G.D., attended the hearing as one of the Respondents. C.E. attended the hearing, half an hour after it commenced, as one of the other Respondents. 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 in attendance provided a solemn affirmation.

Service of the Notice of Hearing packages was discussed, and R.D. and C.E. confirmed that these packages were received. As such, I am satisfied that both Respondents were duly served the Tenants’ Notice of Hearing packages.

Tenant D.C. advised that C.E. introduced himself as the owner of the rental unit, and that he started an unwritten, month-to-month tenancy agreement with them on October

1, 2021, when he collected \$3,000.00 for the October 2021 rent, and \$1500.00 for a security deposit, in cash. She then testified that they paid rent to C.E. for November 2021 in cash as well. However, she stated that he informed them sometime in November 2021 that he was a “silent partner”, that there was another party that would be taking over as the Landlord due to some ownership dispute in court, and that they would need to pay their rent to a different person going forward. They were not informed of who this other person was, and were only provided with an email address for e-transfer purposes. Despite not knowing who this other person was, they paid their rent monthly to this email address, from December 1, 2021, until they gave up vacant possession of the rental unit on December 1, 2022. She testified that they could not get any straight answers, from C.E., R.D., or G.D., regarding who their Landlords actually were.

C.E. advised that he was an agent for his mother, who owned 50% of the rental unit. He testified that the other 50% of the rental unit was owned by R.D. He confirmed that he started an unwritten, month-to-month tenancy agreement with the Tenants on October 1, 2021, that he collected \$3,000.00 for the October 2021 rent, and that he collected \$1,500.00 for a security deposit, in cash. He also acknowledged that he informed the Tenants that they should be paying rent from December 1, 2021, onwards, to a person associated with R.D., due to a court order over an ownership dispute of the property, and that these monies would be held in trust until an outcome over the dispute was determined.

R.D. advised that his wife, and C.E.’s mother, were equal 50/50 owners of the rental unit, that as of December 1, 2021, he was receiving rent from the Tenants by e-transfer, and that these monies were held in trust in accordance with the court order. He did mention that there were some months of rent that were in arrears; however, that was not relevant to the Tenants’ Application.

Both R.D. and C.E. made submissions with respect to the ownership dispute over the property, and the eventual outcome of this dispute; however, these issues were not relevant to the matters that I was required to consider in this Application.

I find it important to note that Section 1 of the *Act* defines a Landlord, and a tenancy agreement, in the following manner:

***“landlord”***, in relation to a rental unit, includes any of the following:

*(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,*

- (i)permits occupation of the rental unit under a tenancy agreement, or*
- (ii)exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;*
- (b)the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);*
- (c)a person, other than a tenant occupying the rental unit, who*
  - (i)is entitled to possession of the rental unit, and*
  - (ii)exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;*
- (d)a former landlord, when the context requires this;*

**"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

When reviewing the consistent and undisputed evidence before me, both C.E. and R.D. confirmed that their respective family members were equal, 50% owners of the rental unit, that they were both acting as agents for the respective family members, and that C.E. entered into an unwritten, month-to-month tenancy agreement with the Tenants on October 1, 2021. In this case, it is uncontested that C.E. acted as an agent of one of the owners of the rental unit and, on behalf of that person, permitted occupation of the rental unit and performed duties for that person, by accepting monies and engaging in a tenancy. Furthermore, it is uncontested that R.D. acted as an agent for the other owner of the rental unit, and continued to accept rent from the Tenants after the tenancy commenced.

As such, I am satisfied that both C.E. and R.D. would meet the definition of Landlords as per Section 1 of the *Act*, as they acted as agents for the owners of the rental unit. Moreover, as they each represented one half of the owners, when the unwritten, month-to-month tenancy agreement commenced on October 1, 2021, both of them were jointly and severally liable for this tenancy. Ultimately, I find that C.E. and R.D. acted as agents for the owners, and they both meet the definition of Landlord under the *Act*. Consequently, I have amended the Style of Cause on the first page of this Decision to reflect this correction. I note that both these persons are responsible for fulfilling any duties or responsibilities under the *Act* as they were the Landlords at the time the tenancy commenced, and this is irrespective of what the current ownership status is of the rental unit.

As the Tenants gave up vacant possession of the rental unit on December 1, 2022, the only relevant issue left to consider in this Application is the Tenants' claim for monetary

compensation. However, I find it important to note that Section 59(2) of the *Act* requires the party making the Application to detail the full particulars of the dispute. The Tenants initially applied for a Monetary Order for compensation in the amount of \$7,050.00, but they later submitted a Monetary Order Worksheet, dated October 25, 2022, claiming for \$4,350.00 instead, and there was no explanation for this discrepancy. Tenant B.L. acknowledged that due to personal circumstances, and the confusion about who their Landlords were, they were not able to amend their Application pursuant to Rule 4.1 to correct this monetary claim, nor did they serve an amendment to the Landlords to inform them of this change, pursuant to Rule 4.6 of the Rules.

Given that it was apparent that there was a dispute over ownership between the Landlords, and that the problematic business relationship between the Landlords negatively affected the Tenants, I am satisfied that both C.E. and R.D. were attempting to avoid their responsibilities and obligations with respect to this tenancy, by not being forthright with the Tenants throughout the tenancy. Therefore, I find that it would be prejudicial to proceed as the Tenants were preoccupied with, amongst other things, trying to establish who to direct their claims against.

As it is not abundantly clear, to any party, of the exact amounts the Tenants believe are owed by the Landlords, and as this uncertainty was partially due to the actions of the Landlords, I do not find that the Tenants had an adequate opportunity to outline a claim for a Monetary Order pursuant to Section 59(2) of the *Act*. Section 59(5) allows me to dismiss this Application because the full particulars are not outlined. For these reasons, I dismiss the Tenants' Application for monetary compensation with leave to reapply. Now that it has been determined who the Landlords responsible for this tenancy were, the Tenants are at liberty to reapply for monetary compensation against the named Landlords in the Style of Cause on the first page of this Decision.

As an aside, D.C. advised that they did not serve the Landlords with a forwarding address in writing; however, she claimed to have sent a text message to C.E. with their new address. She stated that they have not received their security deposit back from the Landlords.

Should the Tenants believe that they provided a forwarding address in writing to one of the Landlords, in accordance with Section 38 of the *Act*, within one year of the tenancy ending, they could also add this issue to their future Application, and it would be up to the Arbitrator conducting that next hearing to determine whether this complied with the *Act*. Furthermore, it could be determined that the Landlords could simply keep the

deposit, in accordance with Section 39 of the *Act*, because a forwarding address in writing was never provided within a year of the tenancy ending.

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

### Conclusion

I dismiss the Tenants' Application for Dispute Resolution with respect to monetary compensation with leave to reapply.

The Tenants' Application with respect to the other issues are dismissed without leave to reapply as they have already given up vacant possession of the rental unit.

Moreover, the Tenants are provided with a Monetary Order in the amount of **\$100.00** 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 15, 2023

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Residential Tenancy Branch