



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL, FFL

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for damage to the rental unit or property and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing with the landlord's spouse. The tenant also attended with an agent and a person introduced as a Co-Tenant. The landlord, and the landlord's spouse, and the tenant's agent each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided by the parties has been reviewed, and the evidence that I find relevant to the application is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?

### Background and Evidence

**The landlord and the landlord's spouse** testified together, that this fixed-term tenancy began in March, 2021 and reverted to a month-to-month tenancy after the first year, which ultimately ended on April 16, 2022. A written tenancy agreement exists but a copy has not been provided for this hearing. Rent in the amount of \$1,450.00 was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of

\$875.00 and no pet damage deposit was collected. The rental unit is a condominium apartment, and the landlord did not reside on the rental property during the tenancy.

The rental unit sold and the landlord trusted the tenants who wanted to move in as soon as possible. However, at the end of the tenancy and during the move-out condition inspection the tenants had another person with them, a relative, who interjected her opinion, abt on the rude side who started being aggressive and gave the tenant advice. The landlord does not recall if a move-in condition inspection report was completed.

The landlord further testified that at the end of the tenancy the dryer had a crack next to the controls and a photograph has been provided. The landlord mentioned it to the tenant during the move-out condition inspection, and the relative automatically said it was caused by stress of a screw next to the crack as though she was a professional. She was very rude with the landlord and mentioned that the landlord didn't know what the landlord was talking about and had Alzheimer's. The person was not invited, had never met the landlord before, and had nothing to do with the tenancy; she said she was going to tag along.

The cost to purchase was \$255.00 for the part and labour of \$195.00 for a total of \$450.00 plus taxes. The landlord ran out of time to make the repair and didn't pay for it in the end. There was a time lag between moving out because the landlord's mother was ill and the landlord had to visit her out of country. A copy of an estimate for the repair has been provided for this hearing.

**The tenant's agent** testified that there was not a move-in condition inspection report, and the tenant does not have a copy. The parties met in the lobby and the tenants were given the key. The Co-Tenant went in by himself and didn't meet the landlord until fall. Then the landlord gave a notice to end the tenancy by way of an email dated March 24, 2022, and a copy has been provided for this hearing.

The rental unit sold quickly and the tenants received an email from the new owner saying that he wanted the landlord to give 2 months notice to end the tenancy. On April 5, 2022 the tenant sent an email to the landlord saying they would be vacating on April 15, and were told that the new move-out date would be April 16, due to the time of day that the landlord received the tenants' notice to end the tenancy, and the move-out condition inspection report was done that day. The landlord had filled in the move-in portion during move-out.

The tenant provided the landlord with a forwarding address on April 5, 2022 in an email with the tenants' notice to end the tenancy, and a copy has been provided for this hearing, along with a response from the landlord.

The landlords did not serve the tenant with the Notice of Dispute Resolution Proceeding, but did serve evidence to the tenant. The tenant got an email from the Residential Tenancy Branch, and got the landlord's evidence that evening.

According to the *Residential Tenancy Act*, when a landlord has requested to end a tenancy for landlord's use, the landlord must give 1 months rent on or before the effective date of the landlord's notice. The tenant requested \$1,750.00 which was equivalent of 1 months rent, and because the tenants moved out early, 2 weeks of rent was also to be returned to the tenant, which was 14 days. The tenant had also requested return of the \$875.00 security deposit.

The tenants did not damage the dryer and the tenant's agent does not know how that is possible, or how the tenant can be required to pay for damages without conducting a move-in condition inspection report. Also, the estimate provided by the landlord is not a proper estimate, but addressed to "Admin," not to the landlord.

#### SUBMISSIONS OF THE LANDLORD:

There was not initial inspection because the landlord trusted the tenants explicitly, and it was during COVID. The tenant's agent sounds like the person who attended the move-out condition inspection.

The landlord believed that the Residential Tenancy Branch would contact the tenants separately about this hearing.

#### SUBMISSIONS OF THE TENANT:

On April 5, 2022 the tenants gave notice to end the tenancy after paying rent for April.

#### Analysis

Firstly, the *Residential Tenancy Act* specifies that a notice to end a tenancy given by a landlord must be in the approved form:

#### **Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

Since the landlord did not give a notice in the approved form, and the purchaser did not give a notice in the approved form the tenants were not required to move out. Therefore, the tenants are not entitled to any compensation:

49 (5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
  - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
  - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

**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.

In this case, the landlord has applied for a monetary order for damages. I agree that the onus is on the landlord to ensure that the move-in and move-out condition inspection reports are completed, and if the landlord fails to do so, the landlord's right to make a claim against the security deposit for damages is extinguished:

**Consequences for tenant and landlord if report requirements not met**

**24** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) [*2 opportunities for inspection*], and

(b) the tenant has not participated on either occasion.

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [*2 opportunities for inspection*],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

However, the landlord's right to make a claim for damages is not extinguished, and the landlord sent an email transfer to the tenant totalling \$2,941.62 on April 29, 2022, which was not accepted by the tenant.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and

4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, the landlord did not repair the dryer, and relies on a text message indicating that the landlord questioned a repair company about a cost of “\$255.00 plus each for the part; 6 to 8 weeks to come and labour is \$195.00; to pickup and install is a total of \$450.00 plus taxes.” That is not proof of the cost, and I dismiss the landlord’s application for a monetary order for damages.

I also take note that the landlord did not serve the Notice of Dispute Resolution Proceeding, which must be served to the tenant within 3 days of making the application, and that information is contained in the Notice of Dispute Resolution Proceeding and other documents provided by the Residential Tenancy Branch to the applicant.

Since the landlord has not been successful with the application the landlord is not entitled to recovery of the \$100.00 filing fee.

The landlord attempted to return money to the tenant on April 29, 2022, which was not accepted by the tenant. I accept that the landlord received the tenant’s forwarding address in writing on April 5, 2022 by email, which is not an accepted method of doing so without the landlord’s express consent. The tenancy ended on April 16, 2022.

Therefore, the tenant must provide the landlord with a forwarding address in writing, in compliance with Section 88:

### **How to give or serve documents generally**

**88** 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 provided for in the regulations.

If the tenant fails to do so within 1 year after the date the tenancy ended, the landlord may keep the security deposit. If the tenant complies, the landlord will have 15 days from the date the landlord receives the tenant's forwarding address in writing to return the security deposit in full, failing which the tenants may apply for double the amount.

### Conclusion

For the reasons set out above, the landlord's application is hereby 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, 2023

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Residential Tenancy Branch