



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNDCT, LRE, LAT, OLC, FFT**

### **Introduction**

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on November 28, 2022 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order restricting the Landlord's right to enter the rental unit;
- an order authorizing the Tenants to change the locks to the rental unit;
- an order that the Landlord comply with the Act;
- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Tenants as well as the Landlord, and the Landlord's Agents attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised relating to service, I find the above mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

### **Preliminary Matters**

At the start of the hearing, the parties confirmed that the tenancy has ended. As such, I find that the Tenants' claims for an order restricting the Landlord's right to enter the rental unit, an order to allowing the Tenants to change the locks to the rental unit, and an order that the Landlord comply with the Act are now moot. I therefore dismiss these claims without leave to reapply. The hearing continued based on the Tenants' monetary claims.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written

evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
2. Are the Tenants entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties agreed that the tenancy began on November 15, 2021. The parties agreed that the Tenants were required to pay rent in the amount of \$4,500.00 to the Landlord which was due on the first day of each month.

The Tenants are claiming for monetary compensation in the amount of \$1,125.00. The parties agreed that some of the Tenants listed on the tenancy agreement signed a mutual agreement with the Landlord agreeing to end the tenancy effective July 31, 2022. The remaining Tenants who have submitted this Application stated that the Landlords were sneaky in signing the mutual agreement with the other Tenants and did not notify the remaining Tenants. As such, the remaining Tenants were left without enough roommates to cover the full rental amount, resulting in the remaining Tenants having to pay the additional \$1,125.00 on their own.

The Tenants are seeking compensation in the amount of \$7,000.00 as the Landlord attended the rental unit without proper notice on August 2, 2022 to conduct a condition inspection report. The remaining Tenants stated that the Landlord did not have any paperwork, therefore, it was not a lawful entry of the rental unit.

The Landlords stated that they had formed plans with the Tenants who signed the mutual agreement to end tenancy to conduct a move out condition inspection of the rental unit. The Landlords stated that the Tenants who were vacating the rental unit were in attendance and that they consented to the Landlord entering the rental unit to inspection the condition.

The Tenants are claiming \$7,000.00 as the Landlord returned to the rental unit on August 6, 2022 to conduct another inspection. The Tenants confirmed that the Landlord provided sufficient notice of entry, however, the Tenants stated that because the Landlord had already attended the rental unit on August 2, 2022, they feel as though the Landlord's attendance was a form of harassment.

The Landlord responded and stated that they were not provided access to the upper portion of the rental unit during the August 2, 2022 inspection, therefore, they returned to the rental unit with proper notice to the remaining Tenants to view the upper portion of the rental unit to complete their inspection of the rental property.

The Tenants are claiming \$7,000.00 as they claim that the Landlord reported the rental unit to the City Bylaw Department regarding an illegal basement suite. The Tenants stated that they received notice of entry from a Bylaw Officer on August 17, 2022 who

attended on August 22, 2022 to inspect the rental unit. The Tenants stated that the basement suite was already in place before the start of the tenancy and that the Landlords were attempting to harass the Tenants.

The Landlord denied calling Bylaw and stated that they were levied a fine following the inspection as a result of the Tenants installing kitchen appliances in the basement of the rental unit. The Landlord stated that the Bylaw visit was purposeful and that the Landlord was not in attendance during the inspection.

### Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

In relation to the monetary compensation sought by the Tenant, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

According to Section 44(1)(C) A tenancy ends if the landlord and tenant agree in writing to end the tenancy.

Policy Guideline 13(B) states that there may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

Policy Guideline 13(E) states that a tenant can end a tenancy by giving the landlord a written notice. A tenancy may also end if the landlord and any tenant or co-tenant mutually agree in writing to end the tenancy. When a tenancy ends in these circumstances, the notice or agreement to end the tenancy applies to all co-tenants.

In this case, I accept that the parties agreed that some tenants named on the tenancy agreement entered into a mutual agreement to end tenancy with the Landlord. I find that this mutual agreement to end tenancy applies to all tenants regardless if only some tenants signed the agreement. I find that the remaining tenants are not entitled to compensation from the Landlord as a result of them agreeing to end the tenancy with some Tenants, leaving the remaining Tenants with limited notification. I therefore dismiss the Tenants' claim for compensation in the amount of \$1,125.00.

The Tenants are claiming \$7,000.00 for compensation as a result of the Landlord's entry into the rental unit on August 2, 2022, \$7,000.00 for the Landlord's entry on August 6, 2022, and another claim for \$7,000.00 relating to a Bylaw Inspection which took place on August 22, 2022.

Section 29 of the Act which states;

(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

The Landlord must ensure that the proper written notice is provided to the Tenants in accordance with Section 29 of the Act.

I accept that the parties agreed that some of the Tenants signed a mutual agreement to end tenancy with the Landlord which had an effective date of July 31 ,2022. I find that it is reasonable for the Landlord to enter the rental unit with the Tenants who signed the agreement to complete a move out inspection of the unit. I find that this entry was reasonable and I find that the Tenants claiming for compensation have not demonstrated that they have suffered a loss, or substantiated the value of their loss. As such, I dismiss the Tenants claiming for \$7,000. relating to August 2, 2022 entry.

Regarding the Tenants' claims for compensation in the amount of \$7,000.00 for entries on August 6, 2022 and August 22, 2022, I find that the Tenants were provided sufficient notice of entry prior to the Landlord entering the rental unit on August 6, 2022 and Bylaw entry on August 22, 2022. I find that the Landlord has not breached the Act. I find that the Tenants have not demonstrated that they suffered a loss as a result of the entry and they have not substantiated the value of their loss. As such, I dismiss these claims without leave to reapply.

Seeing as the Tenants were not successful in their Application, the Tenants are not entitled to the return of the filing fee.

### Conclusion

I dismiss the Tenants' Application 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: April 23, 2023

---

Residential Tenancy Branch