



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      **MNDCT FFT**

### Introduction

This hearing was reconvened by way of conference call in response to the Tenants' application for dispute resolution (Application) under the *Residential Tenancy Act* (Act). The Tenants seek:

- A monetary order for compensation for monetary loss or other money owed to the Tenants by the Landlord pursuant to section 67; and
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72.

The Landlord and the two Tenants (TR and NP) attended this hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure*. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

TR stated the Tenants served the Landlord with their evidence by Xpresspost on September 13, 2022. The Landlord acknowledged she received the Tenants' evidence. As such, I find the Tenants' evidence was served on the Landlord in accordance with the provisions of section 88 of the Act.

The Landlord stated she served her evidence on the Tenants by Xpresspost on September 29, 2022. TR stated the Tenants received the Landlord's evidence. As such, I find the Landlord's evidence was served on the Tenants in accordance with the provisions of section 88 of the Act.

Preliminary Matter – Service of Notice of Dispute Resolution on Landlord

TR stated the Tenants served the Landlord with the Notice of Dispute Resolution Proceeding (NDRP) by Xpresspost on September 13, 2022. Service of a Notice of Dispute Resolution Proceeding by Xpresspost without signature is not a method that is authorized pursuant to the provisions of section 89 of the Act. However, the Landlord acknowledged receipt of the NDRP served on her by Xpresspost.

Section 71(2) of the Act states:

71(2) In addition to the authority under subsection (1), the director may make any of the following orders:

- (a) that a document must be served in a manner the director considers necessary, despite sections 88 *[how to give or serve documents generally]* and 89 *[special rules for certain documents]*;
- (b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;
- (c) *that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.*

[emphasis in italics added]

Section 71(2)(c) of the Act allows me, in appropriate circumstances, to find that a party has been sufficiently served with a document or documents by a method other than permitted by section 89 of the Act. Most commonly, section 71(2)(c) is invoked where it is clear from the testimony and evidence submitted by the parties to dispute resolution proceeding that the intended recipient of the document(s) did in fact receive the document(s). In these circumstances, the recipient cannot claim they were prejudiced on the basis that they did not receive the document(s) or did not know what the contents of those documents were.

Section 71(2)(b) is a remedial provision of the Act that ensures fairness to a party to dispute resolution proceeding who may have inadvertently served another party by a method not permitted by section 89, but the testimony and evidence clearly demonstrate the intended recipient received the document(s). Based on the foregoing, I find the NDRP was sufficiently served on the Landlord and that the Landlords was deemed to have received the NDRP on September 18, 2022, being five days after posting, pursuant to section 71(2)(b) of the Act.

### Issues to be Decided

Are the Tenants entitled to:

- a monetary order for compensation for monetary loss or other money owed by the Landlord?
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72.

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application are set out below.

The Tenants submitted into evidence a copy of a signed tenancy agreement, dated June 4, 2022, between the former landlord and the Tenants. The parties agreed the tenancy commenced on June 1, 2022, on a month-to-month basis, with rent of \$1,875.00 payable on the 1<sup>st</sup> day of each month. The Tenants were to pay a security deposit of \$937.50 by June 24, 2022. Based on the foregoing, I find there was a residential tenancy respecting the rental unit and that I have jurisdiction to hear the Application.

TR stated the Tenants were served with a Two Month Notice to End Tenancy for Landlord's Use dated July 26, 2022 (2 Month Notice). TR stated the 2 Month Notice required the Tenants to vacate the rental unit by September 30, 2022. TR stated the Tenants paid the rent for August 2022. TR did not deny the Tenants paid the rent for August 2022. TR stated the Landlord paid the Tenants \$1,875.00 compensation for the last month of the 2 Month Notice pursuant to section 51(1) of the Act and \$937.50 for the security deposit.

TR stated the Tenants vacated the rental unit on August 18, 2022. TR stated the Landlord refused to compensation the Tenants for the unused portion of the rent the Tenants paid the Landlord covering the period from August 19 to 31, 2022. TR stated the Tenants were seeking recover of the balance of the rent they paid for August 2022. TR submitted into evidence a text message string between the Tenants and Landlord on August 5, 2022 as follows:

Tenants: Hi [first name of Landlord]! I hope your week is going well! [First Name of NP] and I had a lot more luck than anticipated when it came to finding a new place to live. We have just signed a lease for August 16<sup>th</sup> for a place a couple of blocks south of here. We would therefore like to give you notice for this condo for August 18<sup>th</sup>, just so we have a couple of evenings after work for moving. I went over the eviction letter, which said we have to give 10 days notice, but wanted to give you as much of a heads' up as possible. Thanks!

Landlord: Oh wow, that's awesome! Well done. So you will move out on August 18?

Tenants: We will move over a couple evenings, but all of our stuff will be out the evening of August 18<sup>th</sup> and the place will be cleaned for you!!

The Landlord stated she was told by the Contact Centre of the Residential Tenancy Branch that the Tenants were required to give her a written notice, at least 10 days in advance of their move, served in accordance with the provisions of section 88 of the Act. The Landlord stated that, as the Tenants served the notice on her by text, she understood she was not required to compensate the Tenants for the unused portion of the rent they paid for August 2022.

## Analysis

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. In this case, the onus to prove his claims is on the Tenant.

Section 50 of the Act states:

- 50(1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 *[landlord's use of property]* or 49.1 *[landlord's notice: tenant ceases to qualify]* or the tenant receives a director's order ending a periodic tenancy under section 49.2 *[director's orders: renovations or repairs]*, the tenant may end the tenancy early by
- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice or director's order, and
  - (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
- (2) *If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.*
- (3) A notice under this section does not affect the tenant's right to compensation under section 51 *[tenant's compensation: section 49 notice]*.

[emphasis added in italics]

The Tenants provided the text message string with the Landlord sent on August 5, 2022 in which they advised they would be vacating the rental unit on August 18, 2022. Serving document(s) by text is not a method of service permitted by section 88 of the Act. However, not only did the Landlord receive the text messages, she also acknowledged the date on which the Tenants would move out, namely August 18, 2022.

As noted above, section 71(2)(b) of the Act, allows me to find that a document or documents have been sufficiently served on a recipient in appropriate circumstances. In the present case, I find the Landlord not only received the text messages but clearly knew the Tenants were vacating the rental unit on August 18, 2022. As such, I find the Landlord was sufficiently served with the notice they would be vacating the rental unit pursuant to section 71(2)(b) of the Act and the Landlord was deemed to have received the Tenant's notice on August 5, 2022, being the date the Landlord responded to the Tenants' text message.

I find the Tenants paid the full amount of rent for August 2022. I find the Tenants vacated the rental unit on August 18, 2022. I find the Tenants did not use the rental unit for 12 days after they vacated the rental unit. Based on the foregoing, I find they are entitled to recover 12 days rent from the Landlord pursuant to section 50(2) of the Act. As such, I find the Landlord must compensate the Tenants \$725.81, calculated as follows:

$$\frac{\$1,875.00 \times 12 \text{ days}}{31 \text{ days}} = \$725.81$$

Pursuant to section 67, I order the Landlord pay the Tenants \$725.81.

As the Tenants have been successful in the Application, they may recover the \$100.00 filing fee from the Landlord pursuant to section 72(1) of the Act.

### Conclusion

The Landlord is ordered to pay the Tenants \$825.81, calculated as follows:

Description	Amount
Return of Unused Portion of Rent Paid by Tenants for August 2022	\$725.81
Recovery of filing fee of Application	\$100.00
<b>Total</b>	<b>\$825.81</b>

The Tenants must serve this decision and attached order on the Landlord as soon as possible after receiving a copy of it from the Residential Tenancy Branch.

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: May 24, 2023

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Residential Tenancy Branch