



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding WYNN REAL ESTATE LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      MNDCT, MNETC, FFT

### **Introduction**

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find the landlord duly served with the tenant's Application and evidence. The landlord did not submit any written evidence for this hearing.

### **Issues(s) to be Decided**

Is the tenant entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

The tenant testified that the landlord had entered into a tenancy with the tenant, but cancelled the tenancy agreement on the day they were supposed to move in. The tenant submitted text message communication between themselves and the agent for the landlord, as well as a copy of the tenancy agreement that was sent to the tenant to sign. The tenancy agreement was for a fixed-term tenancy that was to begin on August 1, 2022, with monthly rent set at \$3,500.00 per month. The tenant testified that they had paid the security deposit on July 24, 2022 after discussing the details with the agent, and they prepared to move out of their previous home and into this one for August 1, 2022. The tenant submits that on August 1, 2022, they were informed that the owner did not want to proceed with the tenancy.

The tenant testified that they had already packed, and was ready to move in. The tenant testified that they had to request that their previous landlord provide them two extra days to move out, which cost the tenant \$300.00. The tenant testified that they found a place to live, which only had a one car garage instead of a 5 car garage as this one would have had, and had to pay to store their items. The tenant testified that the last minute decision to cancel the tenancy agreement left the tenant with little time to find new housing. The tenant is requesting \$5,000.00 to cover the cost of storage, moving, and renting a temporary home, and an additional \$15,000.00 in compensation.

The landlord's agent testified that although the tenant did apply to rent the home, the application was never formally approved by the landlord, which is supported by the fact that the tenancy agreement was not signed by the landlord. The landlord's agent testified that they held the security deposit only four days, and it was returned to the tenant.

### **Analysis**

The definition of a "tenancy agreement" is outlined in the following terms in section 1 of the Act:

**"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;

Section 16 of the *Act* states the following about when a tenancy agreement takes effect.

**Start of rights and obligations under tenancy agreement**

**16** The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

A tenancy can exist in the absence of a written tenancy agreement. I find that in this case, the landlord's agent presented the tenant with a written tenancy agreement to sign for a tenancy that was to begin on August 1, 2022. The text message communication between the parties show that the tenant had inquired with the agent on July 19, 2022 about whether they were selected or not. On July 21, 2022, the agent responded "Hi, owner confirmed. Are you still interested?" to which the tenant replied "Yes. That's great". The agent then replied that they would send the contract by the next day. On July 27, 2022, at 9:42 a.m., the tenant inquired again and asked the agent "Hey so everything is ok 100% Only thing is inspection and giving deposit and rent right?", to which the agent responded "will call you later". The agent sent a message to the tenant a few hours later which indicated their email address and "\$1,750. Please send us your ID photo as well". The tenant then sent a screenshot of an electronic transfer of \$1,750.00" to the email address provided in the previous text message. The agent sent a message on August 1, 2022 at 12:44 p.m. informing the tenant that "As discussed, the owner isn't granting us to proceed...".

I find that the above referenced messages show that the tenant had inquired more than once about whether the owner was proceeding or not. I find the messages show that the agent did communicate to the tenant that they were selected as shown by the text message on July 21, 2022 that the "owner confirmed". Following this, the tenant was sent a copy of the written tenancy agreement to sign, and provided with instructions on how to pay the security deposit. The tenant followed through with these instructions in a timely manner by remitting payment immediately, and by signing the agreement on July 22, 2022 at 7:14 p.m. Although the tenancy agreement was not signed by the landlord or their agent, I find that a reasonable person would have believed that the tenancy was

going to begin on August 1, 2022 and make arrangements for the move, which in this case the tenant did.

Regardless of whether the landlord had signed the tenancy agreement, the actions imply that a tenancy was agreed upon. The landlord's agent does not dispute that the owner had decided not to proceed with the tenancy, which is supported by the message sent on August 1, 2022, and by the return of the tenant's security deposit.

In light of the evidence and testimony before me, I find that both parties had entered into a tenancy agreement on July 21, 2022 when the agent informed the tenant that the "owner confirmed" and requested that the tenant sign the tenancy agreement and pay the deposit, which the tenant complied with.

Before a tenancy begins, tenants normally have to make arrangements and prepare for the new tenancy, including giving notice to previous landlords, and making moving arrangements, and would not do so if there was a possibility that the tenancy may not begin, especially if the tenancy was to begin soon, which in this case was 11 days later. I find that the tenant was within their right to believe that this tenancy was to begin on August 1, 2022, and was not informed in writing that the landlord did not want to proceed until that date.

Section 44 of the *Act* states how a tenancy may be ended:

### **How a tenancy ends**

- 44** (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
    - (i) section 45 *[tenant's notice]*;
    - (i.1) section 45.1 *[tenant's notice: family violence or long-term care]*;
    - (ii) section 46 *[landlord's notice: non-payment of rent]*;
    - (iii) section 47 *[landlord's notice: cause]*;
    - (iv) section 48 *[landlord's notice: end of employment]*;
    - (v) section 49 *[landlord's notice: landlord's use of property]*;

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

As this tenancy was to begin on August 1, 2022, both parties, as stated in Section 16 of the *Act*, were therefore bound by the rights and obligations required by this tenancy agreement and *Act*. I find that the landlord had unilaterally decided to end this tenancy before the tenant was able to move in. Neither party had signed any Mutual Agreements to end tenancy, nor did the landlord issue any Notices to End Tenancy to the tenant. The landlord did not have an Order of Possession, nor do I find that that the tenant abandoned this tenancy. Based on these facts, I find that the landlord failed to comply with section 44(1) of the *Act* in ending this tenancy.

I accept the tenant's testimony and evidence that as a result of the revocation of this tenancy agreement, the tenant had to request an extension with their previous landlord, and find a new place to live and store their belongings.

Although I sympathize with the tenant and the fact that they did suffer a monetary loss, I find that they did not establish how the amounts requested were obtained, either

referenced and supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or similar evidence to support the losses the tenant is seeking in this application. I find that the tenant failed to meet their burden of proof to support the losses claimed in this application.

Residential Tenancy Branch (“RTB”) Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

*An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.*

As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the tenant compensation in the amount of \$1,750.00 to cover the costs associated with finding new accommodation, storing their items, and additional time spent trying to find housing of similar standard.

The tenant also applied for compensation pursuant to section 51 of the Act for the failure of the landlord to fulfill their obligations pursuant to a Notice to End Tenancy, which requires that a notice be given under section 49 of the Act.

As this tenancy did not end on the basis of a 2 Month Notice to End Tenancy, the tenant is not entitled to a claim pursuant to section 51 of the Act. Accordingly, the tenant’s application for compensation is dismissed without leave to reapply.

As the tenant’s application has merit, I allow the tenant to recover the filing fee.

### **Conclusion**

I issue a \$1,850.00 Monetary Order in favour of the tenant.

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord 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.

The remainder of the tenant's application 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: June 06, 2023

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Residential Tenancy Branch