



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCT, MNETC, FFT**  
                              **MNSDS-DR, FFT**

### Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with two applications filed by the tenants pursuant the *Residential Tenancy Act* (the "Act").

The first application was for:

- A monetary order for damages or compensation pursuant section 67;
- Compensation from the landlord related to a notice to end tenancy for Landlord's use of property pursuant to section 51; and
- Authorization to recover the filing fee from the other party pursuant to section 72

The second application was for:

- An order for the return of a security deposit that the landlord is holding without cause, pursuant to section 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both tenants and both landlords attended the hearing. As all parties were present, service of documents was confirmed. The landlord acknowledged service of the tenants' two Notice of Dispute Resolution Proceedings packages as well as the tenant's amendment filed on April 13, 2022. The tenant acknowledged service of the landlord's evidence. Both parties stated they had no issues with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Should the landlord be ordered to return the tenants' security deposit, doubled?

Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant KB gave the following testimony. The rental unit is the main house located on a residential property consisting of a main house and a modular home. The landlords occupied the modular home. A copy of the tenancy agreement was provided as evidence. The tenancy began on September 1, 2013, with rent set at \$1,000.00 per month plus an additional \$100.00 per month for electricity. The parties are in agreement on these facts.

The tenancy agreement indicates that the landlord will pay for cable and internet as the electric bill has the barn, shop and outdoor light on it. The tenant testified that throughout the entire tenancy, the tenant paid the cable bill which was in the landlord's name via electronic payments directly to the cable company. The tenant submits that the 95 months of tenancy at \$84.00 per month is equal to \$7,980.00 which the tenant erroneously paid on behalf of the landlord. The tenant didn't discover that she made the error in paying the cable bill until the landlord served her with an eviction notice. The tenant never realized her error and never took notice of the clause in the tenancy agreement.

On June 26, 2021, the tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use in their mailbox. A copy of the notice to end tenancy was provided as evidence. The reason for ending the tenancy states the rental unit will be occupied by the landlord or the landlord's close family member. The stated family member is the landlord or the landlord's spouse. The effective date stated on the notice to end tenancy was August 31, 2021.

Upon receiving the eviction notice, the tenants gave notice to the landlords that they would vacate the rental unit. On July 7<sup>th</sup>, the tenants served a 10 day notice that the last day of their tenancy would be July 18<sup>th</sup> although they were fully moved out by July 15<sup>th</sup>. A copy of the tenant's letter dated July 7, 2021 was provided as evidence. The letter provides a forwarding address for the tenants, a Post Office Box.

The tenant JB gave sworn testimony that he served the landlords with the July 7<sup>th</sup> letter containing the forwarding address by placing it in the landlord's mailbox on July 7<sup>th</sup>.

The tenant KB went on to testify that the tenants paid rent and hydro for the month of July and none of it was returned to them. As there were 13 days remaining in July when the tenancy ended on July 18<sup>th</sup>, the tenants seek prorated rent at \$32.26 per day together with prorated hydro refund at \$3.23 per day. Further, the tenants testified that the landlords never compensated them with the equivalent of one month's rent for serving them with a 2 Month Notice to End Tenancy for Landlord's Use.

The tenants were advised by friends and family that it didn't appear the landlords were occupying the rental unit. The tenants hired a private investigator who provided the tenants with a report after doing surveillance on the rental unit. The report was provided as evidence. The tenants seek to recover the \$1,500.00 it cost them to hire the private investigator who authored the report because the tenants could be accused of mischief in they tried to obtain the information themselves. The tenants submit that the report is evidence that the landlords are not occupying the house they vacated. The tenants seek compensation of 12 months rent because the landlords did not use the rental unit for the stated purpose of occupying it.

The landlord SR gave the following testimony. She acknowledges receiving the tenant's 10-day notice/forwarding address letter on July 7<sup>th</sup>. She argues that the forwarding address is not really an address, since it's just a post office box. The reason for not returning the security deposit was because the tenants cut and shaved some trees on the property. The landlord acknowledges she did not file an application for

dispute resolution to seek to keep the security deposit; the landlord felt justified in retaining it without an order.

Regarding the tenant's claim for compensation for paying cable, the landlord testified that the township allows them to burn yard waste twice yearly. The landlord once paid the tenants \$500.00 to burn the yard waste because the landlord knew the tenants needed the money. The tenants assisted the landlord only once in helping to clear and burn brush and justified having the tenant to continue paying the cable because the tenants never offered to assist in burning the brush again.

The landlord did not dispute the fact that the remainder of July's rent or hydro payments was not returned to the tenants. The landlord stated they are trying to get these matters settled but offered no reason for not returning it. The landlord does not agree that the tenants are entitled to a month's free rent as the tenants ought to have stayed until the end of August.

When I asked whether the landlords took advantage of the fact that they could commence occupation of the rental unit in mid-July instead of the end of August, the landlord testified that they did not move in early. The landlord testified that as of the date of this hearing, they are not fully living in the house but instead share their time between the house and the modular unit they were living in prior to evicting the tenants. The landlord testified that some furniture has been moved into the house and that they have been sleeping in the house, but they cook in the modular home. Some clothing has been moved into the house and some personal belongings, but the landlord is still not fully moved in as of today's date. The landlord KB testified that her health has not been well which prevents her from doing the move-in, however JB's health is not compromised. The landlord mentioned that they couldn't get an electrician to come do work because of bad weather and being out of town.

The landlords did not provide any photographs or documents to prove that they were living in the former rental house as they didn't think it was necessary to provide that.

### Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their

case is on the person making the claim and that the standard of proof is on a balance of probabilities.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at Part C:

In order to determine whether compensation is due, the arbitrator may determine whether:

1. a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

· [the 4-point test]

- Tenant's claim for Shaw Cable

**Estoppel by Laches** is defined in Black's Law Dictionary, Sixth Edition as:

*A failure to do something which should be done or claim to enforce a right at a proper time. A neglect to do something which one should do, or to seek to enforce a right at a proper time.*

The legal principle of laches is based on the concept that equity aids the vigilant and not those who slumber on their rights.

In this case, the tenant signed the tenancy agreement that made it clear she was not obligated to pay the cable bills. The tenant had that tenancy agreement in her possession throughout the tenancy. The tenant acknowledges it wasn't until she was served the eviction notice that she took the time to review the tenancy agreement and understand her error. In this case, I find the tenant's claim for the landlord to repay the Shaw Cable bill is estopped by the legal doctrine of Laches as it was preceded by her own failure to enforce this clause in the tenancy agreement during the tenancy. As a result, I dismiss this portion of the tenant's claim.

- tenant's claim for:
  - Return of rent from July 19 – 31: \$419.38
  - Return of hydro utility \$41.99

- \$1000.00 one month's compensation for being served with notice to end tenancy

The parties agree that the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use, effective August 31, 2021. It is undisputed that the tenants then gave the landlords a 10-day notice, ending the tenancy on July 18<sup>th</sup> instead. The 10-day notice is deemed served under section 50(1) of the *Act*.

Section 50(2) of the *Act* states that 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. As it is undisputed that the landlords did not return the rent for the period of July 19 to 31, I award the tenants pro-rated rent for those 13 days in the amount of **\$419.35** pursuant to sections 50(2) and 67 of the *Act*. [ $\$1,000.00 / 31 \times 13 = \$419.35$ ] I also award the tenants pro-rated recovery of the electricity bill paid for that same time period, in the amount of **\$41.93**. [ $\$100.00 / 31 \times 13 = \$41.93$ ]

Section 51(1) states: 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. If a tenant ends a tenancy sooner than the date set out in the landlord's notice to end tenancy, the tenant's right to the one-month compensation is not affected. The tenants are still entitled to be compensated under section 51. Consequently, I award the tenants the equivalent of one month's rent, in the amount of **\$1,000.00** pursuant to sections 51 and 67.

- tenant's claim for private investigator's fee

section 7 allows me to award compensation to a landlord or a tenant for a direct breach of the *Act*, regulations or tenancy agreement. There is no authority under the *Act* that allows me to award compensation to a party to investigate the alleged wrongdoings of the opposing party. In terms of the 4-point test, I find that the loss or damage claimed is not directly attributable to the landlord's non-compliance of the *Act*, regulations or tenancy agreement. As such, I dismiss this portion of the tenant's claim.

- tenant's claim for 12 month's compensation

Residential Tenancy Policy Guideline PG-50 [Compensation for Ending a Tenancy] was written to assist the public in addressing issues regarding ending a tenancy for landlord's use:

## **A. LEGISLATIVE FRAMEWORK**

*Section 49 of the RTA allows a landlord to end a tenancy for “landlord’s use.” Section 51 of the RTA sets out compensation requirements for landlords who end a tenancy for landlord’s use.*

*Sections 51 and 51.4 of the RTA also require a landlord to pay further compensation to a tenant if the landlord does not prove that they have accomplished the purpose for which the tenancy was ended within a reasonable period or, in some instances, have not used the rental unit for the stated purpose for at least 6 months. The director may only excuse a landlord from having to pay this further compensation if there were extenuating circumstances.*

## **C. ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD’S USE OR FOR RENOVATIONS AND REPAIRS**

*A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:*

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or*
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).*

*The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended. Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.*

As stated in the policy guideline, the onus is on the landlord to prove they accomplished the purpose for ending the tenancy. In this case, that means that the landlord must prove they occupied the rental unit for a period of at least 6 months, beginning within a reasonable period after the effective date of the notice.

Section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused since vacant possession is the absence of any use at all. The landlord testified that she has not fully moved into the house but continues to share her time between being in the modular home and the rental home, both located on the property. The landlord testified she sleeps in the rental home but provided no photographic evidence of such. The landlord testified that the cooking of the meals takes place in the modular home and not the rental home. On a balance of probabilities, I find it highly unusual for the landlord to cook the meals in the modular home, then sleep in the rental home, given that the landlord testified that she has mobility issues that prevent her from fully moving into the rental home.

Although the landlord testified that some clothing and furniture has been moved in, it is impossible for me to verify the landlord's assertion that the landlords occupy the rental home without any documentary proof. The landlord did not provide any photographs inside the home, or any substantive evidence of occupation, other than her own testimony. Without any verifiable evidence to satisfy me the rental unit is not being held in vacant possession I must conclude that it is unoccupied.

As the onus falls upon the landlords to prove they used the rental unit for the stated purpose (to occupy it themselves), the landlords have failed to provide sufficient evidence that they have done so. For this reason, I find the tenants are entitled to be compensated with the equivalent of 12 months rent in accordance with section 51(2) of the *Act*. I award the tenants **\$12,000.00** pursuant to sections 51(2) and 67 of the *Act*.

- Tenant's claim for security deposit (doubled)

Section 38(1) of the *Act* states the following:

- 38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
- a) the date the tenancy ends, and
  - b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
  - d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The tenancy ended on July 18, 2021 and landlord acknowledged receiving the tenant's forwarding address, a post office box, on July 7, 2021. The purpose of providing a forwarding address is so that the landlord can effectively return the tenant's security deposit by mail or serve the tenant with a Notice of Dispute Resolution Proceedings package if the landlord intends on filing for dispute resolution to retain the security deposit. There is no requirement under the *Act* or regulations that require the forwarding address be the actual residence of the tenant. I find the landlord did not, within 15 days after the tenancy ended and the landlord received the tenants' forwarding address, repay the tenants' security deposit, or make an application for dispute resolution claiming against the security deposit. Consequently, I award the tenants their security deposit (doubled) pursuant to sections 38(1) and 67. [ $\$250.00 \times 2 = \$500.00$ ].

The tenant paid two filing fees to file their two applications for dispute resolution. The tenants could have amended their first application for dispute resolution to include the



other issues sought and avoid paying the second filing fee. I award the tenants a single filing fee pursuant to section 72 of the *Act*, **\$100.00**.

Item	amount
Pro-rated rent from July 13 to July 31	\$419.35
Pro-rated electricity from July 13 to July 31	\$41.93
Equivalent of 1 month's rent (section 51(1))	\$1,000.00
12 months rent (section 51(2))	\$12,000.00
Security deposit (doubled)	\$500.00
Filing fee	\$100.00
Total	\$14,061.28

### Conclusion

I issue a monetary order in the tenants' favour in the amount of \$14,061.28.

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 29, 2022

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Residential Tenancy Branch