



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenants' application: MNDCT MNETC FFT
Landlord's application: MNDL-S FFL

Introduction

This hearing was convened as a result an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary claim of \$8,464.00 for damages to the unit, site or property, to offset any amount owing with the tenants' security deposit and pet damage deposits, and to recover the cost of the filing fee. The tenants applied for a monetary order in the amount of \$36,906.45, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for 12 months' rent due to the reason not being complied with on the 2 Month Notice to End Tenancy dated April 1, 2021 (2 Month Notice) and to recover the cost of the filing fee.

The tenants, MP and JK (tenants) attended the teleconference hearing, were affirmed and the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. Thereafter the tenants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me.

I have reviewed all oral, documentary and digital evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence related to the facts and issues in this decision.

Preliminary and Procedural Matters

As the landlord did not attend the hearing, and pursuant to RTB Rules 7.1, 7.3 and 7.4, which address consequences for failing to attend a dispute resolution proceeding, after the mandatory 10-minute waiting period, the landlord's application was **dismissed with leave to reapply** as the tenants affirmed that the landlord failed to serve them with their landlord's application. I do not grant the filing fee as the landlord failed to attend the hearing or cancel their application prior to the hearing.

As the landlord did not attend the hearing, service of the tenant's Notice of a Dispute Resolution Proceeding dated November 17, 2021 (Notice of Hearing), application and documentary evidence were considered. The tenant provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the landlord by registered mail dated November 18, 2021, and that the package was addressed to the landlord at the mailing address of the landlord listed on the 2 Month Notice. The registered mail tracking number was provided during the hearing and has been included on the cover page of this decision for ease of reference. The Canada Post online registered mail tracking website confirms that the registered mail package was signed for and accepted by the landlord on November 20, 2021. Based on the above, I find the landlord has been sufficiently served in accordance with the Act, and that this matter is unopposed by the landlord. The hearing continued without the landlord present as a result pursuant to RTB Rules 7.1, 7.3 and 7.4.

The tenant confirmed their email address during the hearing. The tenant confirmed their understanding that the decision would be emailed to both parties. The tenant was advised that any resulting monetary order will be sent to the tenant for service on the other party.

During the hearing, the tenants requested to withdraw their claim related to their dog in the amount of \$2,555.12. As a result, the tenants were advised that pursuant to RTB Rule 2.9, which prevents a claim from being divided, I do not grant leave to reapply for any other monetary claim under the Act. In addition, as the tenants' Details of Dispute only spoke to the net claim before me to 12 times the monthly rent related to the 2 Month Notice, **I dismiss any other portion without leave to reapply**. I find the following details do not include any other monetary claim and that a Monetary Order Worksheet does not circumvent the Details of Dispute listed on the application, which states as follows:

Description:

Did not use property for intended purposes. Forced to relocate due to eviction. Pictures of vacant property July 11, 2021. Pictures of renovations being done July 25th, 2021. All tenants of 4plex evicted, except for one unit. Other 2 units were rented out immediately.

[reproduced as written]

Issues to be Decided

- Is the tenant entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?
- If yes, is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on September 1, 2012. Monthly rent was most recently \$1,530.00 per month and due on the first day of each month.

The tenant presented the 2 Month Notice dated April 1, 2021, with an effective vacancy date of June 30, 2021. The reason stated on the 2 Month Notice states:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Please indicate which close family member will occupy the unit.

The landlord or the landlord's spouse

The child of the landlord or landlord's spouse

The father or mother of the landlord or landlord's spouse

The tenant confirmed that they vacated the rental unit on June 30, 2021. The tenant testified that several copies of utility bills were submitted by the landlord for 3 different addresses, which is conflicting information and does not support that the landlord was living in the rental unit as the utility usage was very little for the time period the landlord was supposed to be residing in the rental unit.

The tenants also confirmed that the tenants have failed to provide their written forwarding address to the landlord. As a result, the tenants were advised that they have until midnight on June 29, 2022 to provide their written forwarding address to the

landlord or they could extinguish all rights to their security deposit and pet damage deposit (combined deposits). As a result, I will not address the combined deposits further in this decision.

Analysis

Based on the undisputed documentary evidence of the tenant and the undisputed testimony of the tenant provided during the hearing, and on the balance of probabilities, I find the following.

12 times the monthly rent - Section 51(2) of the Act applies and states:

Tenant's compensation: section 49 notice

51 (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

[emphasis added]

Based on the undisputed evidence before me, I find the landlord has the burden of proof to provide sufficient evidence that they complied with the reason stated on the 2 Month Notice and I find that the conflicting utility bills fails to meet that burden. In addition, I find the landlord failed to attend the hearing to present any rebuttal evidence, which also fails to meet the burden of proof. Therefore, I find the landlord **must pay** the tenants **\$18,360.00** in compensation from the landlord, comprised of 12 times the monthly rent of \$1,530.00 pursuant to section 51(2) of the Act.

As the tenants' application was partially successful, I grant the tenants the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

I find the tenants have established a total monetary claim of **\$18,460.00** comprised of \$18,360.00 for 12 times the monthly rent for the landlord failing to comply with the reason stated on the 2 Month Notice and the \$100.00 filing fee.

Conclusion

The landlord's application is dismissed with leave to reapply.

The tenants' application is partially successful.

The tenants have been granted a monetary order pursuant to section 67 of the Act, in the amount of \$18,460.00 as indicated above. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties. The monetary order will be emailed to the tenants only for service on the landlord. The landlord is reminded that they can be held liable for all costs related to the enforcement of the monetary order.

The tenants have until June 29, 2022 at midnight to serve the landlord with their written forwarding address under the Act.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 5, 2022

Residential Tenancy Branch