



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC; CNR, MNDC, OLC, ERP, RR, FF

### Introduction

This hearing was reconvened in respect of the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

This hearing was also reconvened in respect of the tenants' application pursuant to the Act for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlords to make emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

The hearing commenced on 18 June 2015 but, as a result of time constraints, was adjourned to be reconvened.

In an interim decision dated 19 June 2015, I issued an order of possession in the landlords' favour. I understand that the tenants have vacated the rental unit.

Although all parties attended the first hearing date (the tenants LB, TW, KR, and ER; and the landlords KL and SH) only the landlords' agent attended the reconvened hearing. I waited until 0941 in order to enable the tenants to connect with this teleconference hearing scheduled for 0930. The agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The agent testified that the landlord SH personally served the tenants with the notices of reconvened hearing on or about 28 June 2015. On the basis of this evidence, I find that the tenants were served with the notice of reconvened hearing pursuant to section 88 of the Act.

#### Preliminary Issue – Landlords' Request to Amend

At the reconvened hearing, the agent asked to amend the landlords' application to include damage to the rental unit caused by the tenants.

Paragraph 64(3)(c) allows me to amend an application for dispute resolution.

The landlords' application seeks a monetary order in the amount of \$4,000.00 for unpaid rent. In this case, the tenants did not have notice that the landlords were seeking compensation for damage to the rental unit. Adequate notice is a requirement of procedural fairness for administrative law proceedings. As the tenants did not have notice of the proposed amended claim, I am exercising my discretion to refuse the amendment. The landlords are at liberty to apply for compensation for this damage in a subsequent application should they elect to do so.

#### Preliminary Issue – Scope of Hearing

The tenants returned possession of the rental unit to the landlords on or about 28 June 2015. As possession of the rental unit returned to the landlords several issues are now moot. In particular the tenants' application for an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62 and an order to the landlords to make emergency repairs to the rental unit pursuant to section 33. I will not consider these issues.

While the tenants participated in the first portion of the hearing, they elected not to participate in the reconvened hearing.

Rule 10.1 of the Rules of Procedure provides that:

**10.1 Commencement of the hearing** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of the tenants' participation in this reconvened hearing, I order the remainder of the tenants' application dismissed without leave to reapply.

#### Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenants?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the claims in relation to the landlords' claim and my findings around it are set out below.

This tenancy began 1 December 2014. All of the parties entered into a written tenancy agreement on 1 December 2014. That agreement was for an initial fixed term of one year. The tenancy agreement sets out that monthly rent of \$2,000.00 was payable on the first. The landlords continue to hold the tenants' security deposit of \$1,000.00 and the tenants' pet damage deposit in the amount of \$100.00.

On 5 May 2015 the landlords issued the 10 Day Notice to the tenants. The landlord KL served the notice personally to the tenant LB. That notice set out that the tenants had failed to pay \$1,000.00 in rent that was due on 1 May 2015. The 10 Day Notice provided for an effective date of 16 May 2015.

In April the parties entered into an agreement, which included a term that rent for May would be reduced by \$1,000.00 (the April Agreement). The agent testified that the terms of this agreement were that if the tenants vacated the rental unit by 1 June 2015,

the landlords would reduce May's rent by \$1,000.00. The agent testified that the tenants have not paid any amount to rent since April 2015. The agent testified that she was not aware of any reason that would entitle the tenants to deduct amounts from rent.

The landlords claim for \$4,000.00:

<b>Item</b>	<b>Amount</b>
Unpaid May Rent	\$2,000.00
Unpaid June Rent	2,000.00
<b>Total Monetary Order Sought</b>	<b>\$4,000.00</b>

### Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

There are various provisions of the Act that permit a tenant to deduct amounts from rent:

- Subsection 19(2) permits a tenant to deduct amounts from rent to recover the excess amounts of a security deposit that did not comply with the Act.
- Subsection 33(7) permits a tenant to deduct amounts from rent for the costs of emergency repairs.
- Subsection 43(5) permits a tenant to deduct the amount of a rent increase which did not comply with the Act from rent.
- Subsection 51(1.1) permits a tenant to deduct one month rent where the landlord has issued a notice to end tenancy pursuant to section 49.
- Subsection 65(1) and subsection 72(2) permit a tenant to deduct rent to recover an amount awarded in an application before this Branch.

There are no other deductions from rent permitted under the Act or regulations. On the basis of the agent's evidence and in the absence of the tenants' participation in the reconvened hearing, I find that the tenants were not entitled to deduct any amount from rent. As such, the tenants owed rent of \$2,000.00 for 1 May 2015 and \$2,000.00 for 1 June 2015. The agent testified that the tenants have not paid these amounts; accordingly, the landlords are entitled to compensation in the amount of \$4,000.00.

The landlords applied to keep the tenants' security and pet damage deposits. I allow the landlords to retain the security and pet damage deposits in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$2,950.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid May Rent	\$2,000.00
Unpaid June Rent	2,000.00
Offset Security and Pet Damage Deposits	-1,100.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$2,950.00</b>

The landlords are provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: August 21, 2015

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Residential Tenancy Branch

