



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF  
CNR, OLC, MNDC, FF

### Introduction

This hearing was convened by way of conference call concerning amended applications made by the landlords and by the tenant.

The landlords originally applied for an Order of Possession and a monetary order for unpaid rent or utilities, for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit and to recover the filing fee from the tenant for the cost of the application.

The tenant's original application sought an order cancelling a notice to end the tenancy for unpaid rent or utilities; for an order that the landlords comply with the *Act*, regulation or tenancy agreement; for an order suspending or setting conditions on the landlords' right to enter the rental unit; for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee for the cost of the application.

The tenant subsequently filed an Amendment to an Application for Dispute Resolution on October 7, 2016 adding a monetary claim for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and a claim for return of double the amount of the security deposit.

The tenant and both landlords attended the hearing on the first day scheduled, however the hearing did not conclude. One of the landlords had given affirmed testimony, during which he advised that the landlords had filed an amended application, which was not before me.

In order to ensure that the parties were given full opportunity to be heard, I found it just in the circumstances to adjourn the hearing and my Interim Decision was provided to the parties, which ordered that all evidentiary material that either party intends to rely on at the hearing be provided to the Residential Tenancy Branch and to the other party no less than 7 days before the hearing.

The tenant and both landlords attended the hearing on the second scheduled date.

During the course of the hearing, the parties agreed that the tenant has vacated the rental unit and the landlords have possession of it. Therefore, the landlords' application for an Order of Possession and the tenant's application to cancel the notice to end the tenancy are both dismissed as withdrawn.

The landlords' amended application has been received which includes a monetary claim for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

No further issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

The issues remaining to be decided are:

- Have the landlords established a monetary claim as against the tenant for unpaid rent?
- Have the landlords established a monetary claim as against the tenant for unpaid utilities?
- Have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for stress and time?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlords for return of all or part or double the amount of the security deposit?
- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for rental rebate and loss of quiet enjoyment of the rental unit?

Background and Evidence

**The landlord** testified that this fixed term tenancy began on November 1, 2015 and expired on November 1, 2016, after which it was to revert to a month-to-month tenancy. However, the tenant moved out of the rental unit on September 19, 2016. Rent in the amount of \$1,850.00 per month was payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$925.00, and no pet damage deposit was paid. The rental unit is a single family dwelling and a copy of the tenancy agreement has been provided.

The landlord further testified that the tenant paid \$975.00 rent for the month of September, 2016, leaving \$925.00 owing as well as rent for the month of October, 2016, for a total of \$2,825.00. The landlords served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. It is dated September 7, 2016 but does not contain an effective date of vacancy. It states that the tenant failed to pay rent in the amount of \$2,775.00 that was due on an unreadable date, either August 1, 2016 or September 1, 2016. The tenant then gave the landlords notice to end the tenancy with 10 days of notice. The landlords claim \$975.00 for September's rent and \$1,850.00 for October.

Also, the tenant failed to pay the water utility bills, natural gas and hydro. The water bill is \$593.82 but the landlord testified that the tenant's portion left outstanding is \$199.97 for July to September 30, 2016; \$22.31 for September natural gas, \$47.25 for October, as well as September's hydro of \$51.20 and \$36.81 for October.

The landlord also testified that in August, 2016 the landlords started to build a carriage house on the rental property, but the project turned out to be an addition to the house. The tenant was advised in April or May, 2016 that it was going to happen and would start once the permit was obtained. However, as soon as the landlords arrived, the tenant called police who attended there only to keep the peace.

On September 18, 2016 the landlords gave the tenant 24 hours written notice to inspect the rental unit. The tenant was moving his bed, washer and dryer out without giving any notice to the landlords. On September 19, 2016 the landlord went to inspect and all the locks had been changed preventing the

landlords from accessing the rental unit. The landlords claim \$94.50 for the cost of changing locks, and a receipt has been provided.

Although the tenant vacated on or about September 19, 2016 the landlords didn't enter the rental unit until after October 10. The tenant had asked for a move-out inspection to take place on September 30, but the tenant didn't show up.

The tenant abandoned the rental property and has not provided the landlords with a forwarding address in writing.

The landlords also claim \$183.75 for cleaning the house and garage, and clearing out the house of pots and pans, a mattress and food from the fridge which was delivered to the tenant's place of business. The landlords claim \$183.75 for the clean-up as well as \$551.25 for 20 hours of cleaning the residence.

The tenant also left water damage to the floor in the laundry area and the landlords claim \$1,346.63. A written estimate has been provided which shows a date of November 21, 2016 for interior painting, inspecting severe scratching on hardwood and water damage under the washer.

The landlords have also provided a written statement which states that the work on the property while building the addition ran from 8:10 a.m., except one day when the excavator started at 7:15 a.m., and the tenant went to work shortly after 8:00 a.m. arriving home at 6:00 p.m. except Sundays, and no work was done on the property on Sundays.

The landlord testified that the tenant has applied for monetary compensation against the landlords, so the landlords responded with a \$50,000.00 claim. The landlords are aware that the monetary jurisdiction for the Residential Tenancy Branch is \$25,000.00 and testified that the balance of the claim to that amount is for the landlords' stress and time.

**The tenant** testified that he paid \$925.00 for rent in September, 2016. The tenant has also provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 1, 2016 and containing an expected date of vacancy of September 10, 2016 for \$1,850.00 unpaid rent that was due on September 1, 2016 and for \$54.85 unpaid utilities following a written demand on September 1, 2016.

The landlords had mentioned completing renovations or building a carriage house on the rental property. When the landlords got a permit, they started building an addition on the house. The landlord called the tenant a few days before August 25, 2016 saying that construction was going to start. The tenant told the landlord that an addition was inconvenient and at the very least, the tenant should get a reduction in rent.

On August 25, 2016 the landlords gave the tenant a note stating that the landlords would be accessing the rental property from 8 a.m. to 6 p.m. on a daily basis from August 26, 2016 through to September 30, 2016, except Sundays. The following day, the landlords showed up without any further notice and ripped the deck off and took away parking spots on the rental property. The tenant told them to stop, and video evidence has been provided. It shows the landlords in the process of knocking railings off of a large deck attached to a house. The tenant had wanted to use the deck for a birthday, but the landlord started moving the tenant's belongings out of the way blocking access and making the barbeque area unusable.

The tenant also testified that he was acting on the basis that the landlord was disguising a 2 Month Notice to End Tenancy for Landlord's Use of Property, and the tenant gave the landlords 10 days notice to end

the tenancy earlier, a copy of which has been provided. That notice was given on September 19 or 20, 2016.

The tenant changed the locks because they didn't work well and there have been lots of previous tenants living in the rental unit. Doors had been kicked in including the garage door, and the tenant felt new locks were justified, and told the landlords he was going to change them. Also, the landlord testified that he never entered the rental unit before October 10 but the locksmith invoice provided by the landlords is dated September 26, 2016.

The tenant testified that the landlords took possession and the tenant didn't have a chance to move out, but the landlords did not deliver all of the tenant's belongings. Headlights in a box are missing, as well as several other things. Further, the mattress was ruined and was lying halfway on the road, a photograph of which has also been provided.

The tenant also testified that the invoice for cleaning provided for this hearing by the landlords contains an address that is registered to the landlords' son.

The tenant provided the landlords with a forwarding address in writing which is contained in the Tenant's Application for Dispute Resolution as well as in a note served to the landlords with the application and notice of this hearing.

The tenant claims \$25,000.00 for return of the \$925.00 security deposit, \$1,850.00 of which is a claim for compensation for October's rent, a rebate for reduced facilities for August and September, and aggravated damages, and punitive damages.

### Analysis

In this case, it is clear that neither party has complied with the *Residential Tenancy Act*.

Firstly, a landlord may not enter a rental unit subject to a tenancy unless the landlord has given written notice at least 24 hours prior, and not more than 30 days before entry, which must include the following information: the reason for entering, which must be reasonable and the date and time of entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees. It is not sufficient to give a tenant a note specifying multiple days in excess of 30 days, and to do so is a breach of the tenant's right to quiet enjoyment of the rental unit.

Further, a landlord must not remove a service or facility if it is a material term of the tenancy, and where a landlord removes a service or facility that is not a material term, the landlord must give the tenant 30 days' written notice in the approved form and reduce rent by a proportionate amount:

- 27 (1) A landlord must not terminate or restrict a service or facility if
  - (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
  - (b) providing the service or facility is a material term of the tenancy agreement.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
- (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

There is no evidence before me that a move-in condition inspection report was completed by the parties at the beginning of the tenancy. The landlord testified that the tenant had requested a move-out condition inspection for September 30, 2016 but didn't show up. The tenant didn't dispute that testimony, however the *Act* places the onus on the landlord to ensure that both inspections are completed in accordance with the regulations. That didn't happen at the beginning or end of the tenancy. The *Act* also specifies that those reports are evidence of the condition of the rental unit at the beginning and end of the tenancy, and absent such reports I cannot conclude that the tenant caused damage to the floor of the laundry area, and the landlords' claim of \$1,346.63 is therefore dismissed.

The landlord's testimony respecting unpaid rent doesn't quite add up and differs from the amounts claimed in the 10 Day Notices to End Tenancy for Unpaid Rent or Utilities. I accept the testimony of the tenant that he paid \$925.00 for September, 2016.

The tenant testified that he treated the landlords' actions as a disguised 2 Month Notice to End Tenancy for Landlord's Use of Property and was therefore justified in giving 10 days notice to end the tenancy. I disagree. Unless the landlords actually serve a 2 Month Notice to End Tenancy for Landlord's Use of Property, a tenant is required to give 1 months' notice to end the tenancy. In this case, the tenant gave notice in September to vacate, which I find does not take affect until the end of October, 2016 and the tenant is required to pay rent and utilities to that date. With respect to mitigation, the landlords were not aware prior to the tenant's notice that the tenant intended to move out, and I find that the landlords could not have re-rented the rental unit prior to November 1, 2016 even if it had been advertised due to the on-going work on the rental property. The tenant withheld rent, which is also contrary to the law.

However, I must also consider the tenant's application for a reduction in rent. I have read all of the material provided by the parties and I have reviewed the digital evidence provided by the tenant. There is no indication that the parties had any difficulties until the last week of August, 2016. The work to the deck started on August 26, 2016 and the tenant vacated the rental unit on September 19, 2016. Having found that the landlords breached the *Act* by removing a facility without written notice in the approved form, I am satisfied that the value of the loss of the deck and parking areas, particularly in summer months, is a quarter of the monthly rent from August 26, 2016 to the end of October, 2016, or \$1,014.52. I find that the total reduction in rent is that amount, and the tenant has paid \$925.00 for September. I find that the landlords are owed \$1,760.48 to the end of October, 2016.

I also allow the utilities claimed by the landlords totalling \$357.54.

The landlords also currently hold a security deposit in the amount of \$925.00, which belongs to the tenant. The tenant's amended application seeks double the amount, however the tenant provided the landlords with a forwarding address in writing with the Tenant's Application for Dispute Resolution for this hearing, and that is not sufficient for claiming double, and I order that the tenant recover \$925.00.

With respect to the landlords' claims for cleaning and clearing out the remainder of the tenant's belongings, I do not accept the testimony of the landlord that the tenant abandoned the rental property. The tenant gave notice to the landlords that he would be moving out of the rental unit, which is hardly

abandonment. I find that the landlords cleaned and cleared out the rental unit of their own choosing, and I dismiss the claims.

The tenant testified that the doors had locks that were not trusted at the beginning of the tenancy, that there had been other previous tenants, and that the tenant told the landlords that he would be changing locks. The landlord disputed that doors had been previously damaged. However, a landlord must ensure that locks are re-keyed at the beginning of the tenancy:

- 25 (1) At the request of a tenant at the start of a new tenancy, the landlord must
- (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and
  - (b) pay all costs associated with the changes under paragraph (a).
- (2) If the landlord already complied with subsection (1) (a) and (b) at the end of the previous tenancy, the landlord need not do so again.

A tenant must not change locks during a tenancy without the landlord's written consent and must provide the landlord with a key to access the rental unit. Neither party in this case has complied with the *Act*. I find that the landlords breached first, and therefore, the landlords' application for the costs associated with new locks or keys is dismissed.

The *Residential Tenancy Act* does not permit claims for punitive damages, which are damages meant to punish a party for a wrong-doing. However, both parties claim aggravated damages for stress and harassment.

A tenant is entitled to quiet enjoyment of a rental unit and if that covenant is breached by a landlord, monetary compensation may be awarded, but the same covenant does not apply to a landlord.

- 28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
- (a) reasonable privacy;
  - (b) freedom from unreasonable disturbance;
  - (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
  - (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I am satisfied that the landlords' application for aggravated damages is a claim for being frustrated and angry with the tenant, but the landlord has not suffered any damage or loss. I am also satisfied that the tenant was very annoyed with the landlords, however the tenant has suffered damages as a result of the landlords' actions in moving out the tenant and dumping the tenant's belongings on a sidewalk or losing some. The tenant has provided some photographs, but not an exhaustive list nor values.

The amount of monetary compensation awarded must not put the tenant in a better financial situation than the tenant would be had the landlords not breached the *Act* and tenancy agreement. In the circumstances, I find that the tenant is entitled to recovery of the equivalent of one month's rent as moving expenses, inclusive of aggravated damages.

Since both parties have been partially successful with the applications, I decline to order that either recover filing fees.

Considering the testimony and evidence before me, I find that the parties have established monetary claims as follows:

DATE	DESCRIPTION	OWED TO LL	OWED TO TNT	BALANCE DUE TO LL
Aug/16	Rent Due	\$1,850.00	89.51	1,760.49
Aug/16	Rent Paid	(1,850.00)		(89.51)
Sep 1/16	Rent Due	\$1,850.00	\$462.50	\$1,297.99
Sep 19/16	Rent Paid	(925.00)		372.99
Oct 1/16	Rent Due	1,850.00	462.50	1,760.49
Various	Utilities Due	357.54		2,118.03
End of Tenancy	Security Deposit		925.00	1,193.03
End of Tenancy	Damages		1,850.00	(\$656.97)

### Conclusion

For the reasons set out above, the landlords' application for an Order of Possession is hereby dismissed as withdrawn.

The tenant's application for an order cancelling a notice to end the tenancy for unpaid rent or utilities is hereby dismissed as withdrawn.

I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$656.97.

This order is final and binding and may be enforced.

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: January 03, 2017

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Residential Tenancy Branch

