



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDL-S, MNDCL-S, FFL

### **Introduction**

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

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

The landlords testified that they served the tenants with separate copies of their application for dispute resolution via registered mail. The tenants testified that they received the landlord's application for dispute resolution on January 10, 2019. I find that the tenants were served with the landlords' application in accordance with section 89 of the *Act*.

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

1. Are the landlords entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Are the landlords entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Are the landlords entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?

4. Are the landlords entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

### **Background and Evidence**

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agree to the following facts. This tenancy began on January 1, 2017 and ended on March 10, 2018. Monthly rent in the amount of \$500.00 was payable on the first day of each month. A security deposit of \$200.00 was paid by the tenants to the landlord.

Both parties agree to the following facts. The tenants were served with a Two-Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") with an effective date of January 31, 2018. The Two Month Notice stated that the landlord D.L. wished to have her elderly father move into the subject rental property. The tenants disputed the Two Month Notice and a hearing with the Residential Tenancy Branch was held. In a Decision dated February 4, 2018 an Arbitrator upheld the Two Month Notice and issued the landlord an Order of Possession effective February 28, 2018. The Order of Possession dated February 4, 2018 was entered into evidence.

Both parties agreed that the tenants have not provided the landlord with their forwarding address in writing.

The landlords testified that since the tenants did not move out on January 31, 2018, as per the Two Month Notice, they had to pay for landlord D.L.'s father to stay in a care home for the months on February and March 2019 at a rate of \$2,095.00 per month. The landlords entered into evidence invoices from the care home stating same. The landlords testified that while the tenants moved out on March 10, 2018, they were not able to only pay for a partial month at the care facility and therefore incurred the cost for the entire month of March 2018. The landlords testified that landlord D.L.'s father moved into the subject rental property on April 1, 2018. The landlords are seeking to recover \$4,190.00 for the cost of the care home for February and March 2018.

The tenants testified that they are not required to compensate the landlords for the cost of February 2018's care facility because the February 4, 2018 Decision allowed them to

stay at the subject rental property for the entire month of February 2018. The tenants testified that they tried to move by the February 28, 2018 deadline but were unable to do so.

The landlords testified that the tenants did not clean the subject rental property when they moved out. The landlords entered into evidence photographs showing same. The landlords testified that they hired a cleaner to clean the subject rental property and entered into evidence a cleaning receipt in the amount of \$150.00 which states that the cleaner cleaned for 6 hours at a rate of \$25.00 per hour. Landlord E.L. testified that he also cleaned the subject rental property for approximately 4 hours and is claiming a total of \$100.00 at a rate of \$25.00 per hour for his labour.

The tenants testified that moving in such a short period of time was very difficult and that the landlords should not be complaining about a little bit of dirt. The tenants testified that the mess they left behind was insignificant given the fact that they had to move out in the middle of winter.

Both parties agreed that during the tenancy the tenants received permission from the landlord to remove the old light fixtures and install new ones on the condition that when they moved out the tenants would take their lighting with them and would re-install the old lighting. Both parties agreed that when the tenants moved out of the subject rental property they removed the light fixtures they purchased but did not re-install the old light fixtures.

The landlords testified to the following facts. The tenants left wires exposed and removed outlets throughout the subject rental property. The tenants cut a wire on the exterior of the subject rental property which led to the tenants' shop. The tenants' shop was a C-CAN which was removed when the tenants move out. The landlords hired a retired electrician to install all of the light fixtures and repair all of the electrical issues at the subject rental property. Photographs were entered into evidence showing missing outlets, missing fixtures and a cut outside wire.

The retired electrician testified to the following facts. He spent approximately 1.5 days making electrical repairs to the subject rental property and installing the lights. The landlords promised to pay him \$300.00 for his work. The landlords are seeking \$300.00 from the tenants to compensate the retired electrician.

The tenants testified that they secured plates over all of the fixtures and told the landlords that they could re-install the old fixtures.

Both parties agreed to the following facts. On one occasion the tenants complained to the landlord that the stove in the subject rental property filled the subject rental property with smoke. The tenants purchased a new stove, and without consulting with the landlord, installed it at the subject rental property. The old stove was moved to a storage area.

The landlord testified that when the tenants moved out of the subject rental property they took the new stove with them and the landlord re-installed the old stove, which has been working without issue since mid March of 2018. The landlord testified that it took him five hours to re-install. The landlord testified that he is seeking \$300.00 from the tenants for his labour because he received a quote for installation in that amount. No quote was entered into evidence.

The tenants testified that they replaced the stove because it was a hazard and their primary source of heat. The tenant testified that re-installing the stove was an insignificant amount of work.

Both parties agree that the tenant stored a rock cutting machine in the landlord's lean to. The landlord testified that the rock cutting machine leaked diesel onto the floor and so the floor requires remediation as it is a fire hazard. The landlord testified that he is claiming \$399.75 for the cost of repairing the floor in the lean to. The landlord testified that the materials required to repair the floor would cost \$248.75; however, no receipts or estimates were entered into evidence. The landlord estimated that it would take him 6 hours of labour to fix the floor and is claiming a rate of \$25.00 per hour for a total of \$150.00 for his labour.

The tenant testified that a couple of drops of diesel were spilt on the floor but he was more concerned with getting out of the subject rental property than with a few drops of diesel.

Both parties agree that one set of keys were not returned to the landlords. The landlord testified that the locks required replacing since all of the keys were not returned. The landlord entered into evidence a receipt in the amount of \$13.38 for the cost of new keys. The landlord also claimed \$20.00 for the cost of a new lock but no receipt was entered into evidence.

Both parties agree that tenant R.F. made a whole in the floor of the hay barn. The landlord testified that he contacted a contractor who provided him with an estimate of \$100.00 to fix the floor. The landlord is seeking this amount from the tenants. No estimate from the contractor was entered into evidence.

The tenant testified that he stepped off a ladder and his foot went through the rotten floor. The tenant testified that he is sorry about the whole but thankful that he didn't break his ankle. Both parties agree that move in and move out condition inspection reports were not completed.

Both parties agree that the tenants had a C-CAN shop at the subject rental property and that heavy machinery was required to remove it. Both parties agreed that the tenants hired a company to widen the snow lined road to allow for the wide load trailer to get to the shop.

The landlords testified that the company the tenant hired to move his shop caused a significant amount of damage to his yard including piles of dirt and snow. The landlords contacted an excavating company and obtained a quote in the amount of \$483.00 to return his yard to its previous condition. The aforementioned quote was entered into evidence.

The tenants testified that it was a major job to remove the shop in the middle of winter and that a significant amount of snow surrounded the shop and this all had to be removed to allow for the crane to lift the shop onto the truck. The tenants testified that it was not possible to determine what was dirt and what was snow given the conditions. The tenant testified that the mess was a result of being evicted in the winter.

In summary, the landlord is seeking the following damages:

Item	Amount
Care home fee	\$4,190.00
Cleaning	\$250.00
Electrical repairs	\$300.00
Wood stove installation	\$300.00
Lean to floor repair	\$399.75
Keys and lock	\$33.38
Repair hay barn floor	\$100.00
Excavation repair	\$483.00
Filing fee	\$100.00
<b>Total</b>	<b>\$6,156.13</b>

## **Analysis**

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

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

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

## **Care Home**

I find that the tenants failed to comply with the Order of Possession effective February 28, 2018 and that they overheld the subject rental property by 10 days. I find that the landlords suffered a loss from the tenants overholding, namely, they were required to pay \$2,095.00 for the month of March 2018 at a care home facility. I therefore find that the tenants are responsible for this charge. I find that the tenants are not responsible for the care home fee for the month of February 2018 even though the Two Month Notice had an effective date of January 31, 2018. The tenants had a right to dispute the notice and will not be penalized for pursuing their legal options. The February 4, 2018 Decision allowed the tenants to stay at the subject rental property until the end of February and as such, they are not responsible for charges the landlords incurred in housing landlord D.L.'s father in February of 2018.

## **Cleaning and Electrical Repairs**

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the photographic evidence of the landlord and the testimony of both parties, I find that the rental unit required significant cleaning. The landlord submitted into evidence, a cleaning receipt for \$150.00. I find that the tenants are responsible for these cleaning fee. I accept the landlord's testimony that he spent approximately four hours cleaning at the subject rental property. I find that a rate of \$25.00 per hour is

reasonable and that the landlord is entitled to recover \$100.00 from the tenants for time he spent cleaning. The landlord is entitled to recover a total of \$250.00 from the tenants for cleaning.

Based on the testimony of both parties I find that the tenants did not re-install the old lighting at the subject rental property and that this task was left for the landlords to complete. Based on the photographs I find that the tenants left the subject rental property in need of electrical work to be completed. I accept the testimony of the retired electrician who testified that he spent 1.5 days at the subject rental property re-installing light fixtures and completing other electrical work. I find that the landlords are entitled to recover the \$300.00 promised to the retired electrician for work he completed on the property.

#### Stove Installation

The landlord testified that he based his \$300.00 claim for the cost of installation on a quote that was not entered into evidence. I find that the landlord has failed to prove the quantification of his loss. I therefore dismiss the landlord's claim for \$300.00 for installation of the stove.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that the landlord suffered a loss for having to re-install the old stove but failed to prove the value of that loss and so is entitled to nominal damages in the amount of \$50.00.

#### Lean to floor repair

Based on the testimony of both parties, I find that diesel from the tenants' rock saw leaked onto the floor of the lean to. The landlords are claiming \$248.75 for materials required to repair the floor but did not submit any quotes or receipts for the aforementioned materials into evidence. I therefore find that the landlords failed to prove the quantification of their damages for materials and their claim for same is dismissed.

The landlords testified that it would take six hours to repair the floor and is claiming \$150.00 for labour. I find that the landlords have failed to prove that it would take six hours to repair the floor and so their claim is dismissed.

I find that the landlords are entitled to nominal damages as a loss was suffered but the quantification was not proved. I find the landlords are entitled to nominal damages in the amount of \$50.00.

#### Keys and lock

Based on the testimony of both parties I find that one set of keys were not returned to the landlords. I find that it was appropriate for the landlords to change the locks. The landlords entered into evidence a receipt for the cost of new keys in the amount of \$13.38, I find that the landlords are entitled to recover that amount from the tenants. The landlords did not enter into evidence a receipt for the cost of a new lock and therefore have failed to prove the quantification of their loss. I therefore dismiss the landlord's claim for \$20.00 for a new lock.

#### Repair hay barn floor

Based on the testimony of both parties, I find that tenant R.F. put a hole in the floor of the hay barn floor. The landlords testified that they are claiming \$100.00 for the repair of the floor because they received an estimate for that amount for the repair of the floor. No estimate was entered into evidence. I find that the landlords failed to prove the quantification of their claim and so their claim for \$100.00 is dismissed. While it is admitted that the tenant R.F.'s foot went through the floor when he stepped off the ladder, I find that the landlords failed to prove that the floor was structurally sound and not otherwise in need of repair. I therefore find that the landlords are not entitled to nominal damages.

#### Excavation repair

Based on the testimony of both parties and the photographic evidence, I find that the process of removing the tenants' shop from the subject rental property caused significant damage to the grounds on which the shop sat. I find that, pursuant to section 37 of the *Act*, the tenants were required to leave the subject rental property, including the grounds on which it and the shop sat, undamaged except for reasonable wear and tear. I find that the condition in which the tenants left the grounds was not reasonable



wear and tear. The landlords entered into evidence an estimate for the repair of the grounds in the amount of \$483.00. I find that the landlords are entitled to recover this amount from the tenants.

### Security Deposit and Filing Fee

Section 38 of the *Act* states that 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.

I find that the landlords made an application for dispute resolution claiming against the security deposit pursuant to section 38 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlords are entitled to retain the tenants' entire security deposit in the amount of \$200.00 in part satisfaction of their monetary claim against the tenants.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

### Conclusion

I issue a Monetary Order to the landlords under the following terms:

Item	Amount
Care home fee	\$2,095.00
Cleaning	\$250.00
Electrical repairs	\$300.00

Wood stove installation- nominal damages	\$50.00
Lean to floor repair- nominal damages	\$50.00
Keys and lock	\$13.38
Excavation repair	\$483.00
Filing fee	\$100.00
Less security deposit	-\$200.00
<b>Total</b>	<b>\$3,141.38</b>

The landlords are provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 24, 2019

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Residential Tenancy Branch