



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, ERP, LRE, OLC, PSF, OPC, MND, FF

### Introduction

In the first application the tenants seek to cancel a one month Notice to End Tenancy for cause. They also seek orders for repairs, restricting landlord entry and to provide services and facilities.

In the second application the landlord seeks an order of possession pursuant to the Notice, as well as a monetary award for various claims.

At the first hearing May 16, it was apparent that the tenants had found new accommodation and were vacating the property on June 16. As a result their claims to cancel the Notice and for the orders described above, were moot, they were no longer required. The matter was set over to June 25, 2019 and in the meantime the tenants amended their application to include a significant monetary claim against the landlord for repairs, moving costs rental losses, loss of use of a portion of the premises and for the return of deposit money.

The hearing of these claims took place over June 25, 27 and 28, 2019.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Have the tenants left the premises reasonably clean and free from damage but for reasonable wear and tear? If not, what is a fair assessment the landlord's loss as a result? Has the landlord failed to keep the rental unit in good repair? Does the landlord owe the tenants money for repairs they did or improvements they made? Are the

tenants entitled to compensation for their move away for loss of rental income or use of a portion of the premises?

TEXT

### Background and Evidence

The rental unit is a small house in a large city. It is a very old house, said to have been constructed in 1901. Originally it would appear to have had a two bedroom main floor and a basement. Perhaps the basement was built as a two bedroom suite but regardless, there was a two bedroom suite in the basement at the start of this tenancy. As well, there was a third two bedroom suite in the back of the house. The photos indicate that it may well have been an addition made some time ago. There is further evidence to suggest that the back suite was not permitted by the local zoning bylaw.

This tenancy started in July 2016. The landlord had just purchased the house. These tenants were his first tenants. They signed a one year fixed term tenancy agreement for the entire structure as one rental unit. The rent was \$2000.00 per month and the tenants paid a \$1000.00 security deposit. It is debatable whether the landlord even looked at the house before buying and renting it. It is clear that the landlord did not conduct a move-in inspection and prepare a report, as he is required to do by s. 23 of the *Residential Tenancy Act* (the “Act”).

After the first year the parties signed another fixed term tenancy, this time for two years to June 30, 2019. The agreement required the tenants to move out at the end of the fixed term.

Over the almost three years of tenancy the tenants lived on the main floor and sublet the basement suite and back suite to others. They did not have the landlord’s written consent to do so as required by s. 34(1) of the *Act*. Nevertheless, it is apparent that the landlord or at least his wife and agent Ms. L.Z. was aware the tenants were doing so and did not object.

During the early part of the tenancy the tenant Mr. F. appears to have carried out considerable construction work inside the home. A subsiding floor in the back suite was renovated with new beams and subfloor. Carpets were removed but not replaced. A gas stove was installed.

In late 2018 the tenants made the decision to contact the local government, the City, about the home. A City representative attended and viewed the home. She determined that the back unit was then unoccupied. She directed that it remain unoccupied and used only for storage and that there be no further construction in addition to that undertaken by the tenants to date.

The City had also directed that the premises was unsightly and ordered that junk outside the home be removed. As some of the junk was the landlords (or at least wasn't the tenants') the parties got together to removed it. The landlord had hired a bin company who, on removing a loaded bin from the property, hit the building with its truck. As a result, considerable damage was done to a porch and deck area outside the back suite. Some minor damage to the suite itself may also have occurred.

### Analysis

#### THE TENANTS' CLAIM

##### Moving Costs

This item of the tenants' claim must be dismissed. The choice to move was the tenants' choice. They initially chose to challenge the one month Notice to End Tenancy and had they successfully pursued that course they would still have their tenancy (note: the tenancy agreement required the tenants to move at the end of June but such a requirement in a tenancy agreement has been rendered void by recent changes to the legislation).

##### First Month's Rent and Security Deposit and Pet Damage Deposit

I assume this claim is for the rent and deposit money the tenants have paid for their new accommodation. As with the claim for moving costs, these items must be dismissed. There is no basis to conclude the landlord is responsible for them.

##### Improvements to the Rental Unit

The tenants present two quotes from contractors for significant renovation work to the house. One quote is for \$35,516.25. The other is for \$40,370.00. The tenant Mr. F. testifies that he obtained these quotes and presented them to the landlord who agreed that she would pay him if he did the work. He testifies that he did. The landlord denies

any such agreement and points to the tenancy agreement which specifically provide the tenants pay for any renovation work.

I must dismiss this item of the tenants' claim. The tenancy agreements, both the first one in 2016 and the second one in 2017, provide that

**4, The tenant agrees to be responsible of regular landscape, maintenance of the property and upkeep with minor repairs. Up to the tenant's choice and budget ,any renovation for the property during the lease term will be on the tenant's own cost.**

In my view this clause is virtually conclusive that the landlord is not responsible for the cost of the work done by Mr. F. As well, Mr. F. testified that his agreement with the landlord was that she would not pay the full quote costs but rather "fifteen or twenty thousand dollars." This testimony indicates that Mr. F. and the landlord if they had discussed tenant compensation had not agreed on any price. Without a price for either the work or the labour, there could be no enforceable agreement.

#### Security Deposit

The tenants are entitled to an accounting and credit for the \$1000.00 security deposit paid.

#### Utilities

The landlord consents to this claim of \$91.41 electricity costs and says that it has been credited to the tenants' utilities account. I therefore make no specific award but, in the event the money has not been credited as alleged by the landlord I grant the tenants leave to re-apply.

#### Loss of Rental Income / Loss of Use of Back Suite

The tenants say that because of the damage caused by the bin truck that hit the house, they lost rent from the back suite in the amount of \$1200.00. Further, they say, and the landlord admits that an insurance company paid the landlord \$3000.00 for loss of rental income from the suite due to the truck-caused damage.

I must dismiss the tenants' claim for loss of rental income. The evidence shows that the City had prohibited occupation of the back suite in December. There is no evidence that the tenant Mr. F. had applied for a received a permit to continue renovation work. So, the suite could not have been lawfully rented out when or after the bin truck hit the porch and deck in January 2019.

The landlord consents to the tenants' \$3000.00 claim. Ms. Z. says that she negotiated with the insurer for this amount on the understanding that it would be money that went to the tenants. The correspondence filed in this matter tends to support that statement.

## Result

The tenants are entitled to a monetary award of \$3000.00.

## LANDLORD'S CLAIM

### Pest Control

In October 2018 the landlord retained a professional pest control company to treat for fleas and for vermin. The cost was \$546.00. The company's report indicated that no flea activity had been seen, though a lot of vermin activity was apparent.

I must dismiss this item of the landlord's claim. While there had been mention of fleas in carpeting and the tenants removed the carpeting, the evidence does not establish that there were fleas in October 2018 or that the tenants were somehow negligent in preventing them. Nor does the evidence establish that the tenants did or did not do something that caused the ingress of vermin. Most often vermin find access into a rental unit due to a failure in the building envelope and normally a landlord is responsible to repair and maintain a building envelope (unless a tenant damages it). In this case there is simply insufficient evidence to permit a finding that the tenants were responsible for the ingress of vermin.

### Landscaping and Clean Up / Junk Removal

In August 2018 the landlord paid \$614.25 for yard work including blackberry bushes removal, lumber and debris removal and general yard clean up. The work would appear to have been as a result of a municipal order.

In January 2019 the landlord paid a junk removal company \$901.30 to supply and remove a junk bin. It appears that both the landlord and the tenants attended the property to put junk into that bin.

There is no doubt that at the start of the tenancy there was a small utility trailer and a stack on lumber on the property. I find that during this tenancy the tenants added significantly to the debris and the items cluttering the yard.

In these circumstances I find it fair that the parties split both these cleanup charges. I award the landlord \$757.75.

#### City Water and Sewer Fees

The landlord claims for three years of City utilities totalling over the claimed \$6040.80. These annual charges had not been presented to the tenants until the parties fell into serious disagreement earlier in 2019. It is apparent that under the tenancy agreement they are the responsibility of the tenants.

The tenant Mr. F. says the landlord's representative Ms. Z. "waived" the fees. It is apparent that the parties had some settlement discussions and lease renewal discussions in which the fees were tangentially considered.

Ms. Z. says the fees weren't forwarded to the tenants for payment because the landlord has other properties and these charges go to a bookkeeper or accountant who simply paid them without knowing of the term in this lease making them the tenants' responsibility.

I find that the tenants are responsible for these charges and that they have not proved on a balance of the evidence that the landlord ever agreed to waive the charges.

I award the landlord the amount claimed: \$6040.80.

#### Restoration of Property Damage

I dismiss this item of the landlord's claim. On the evidence, I find that this house was in a very poor state of repair when the tenancy started. The floor in the back room was falling through. Likely squatters had been using the building. On the evidence submitted it is simply not possible to determine that any money awarded to the landlord

for property damage would not be for damage or similar damage that pre-existed this tenancy.

To compound matters, the landlord has put himself in a very difficult position by failing to conduct a mandatory move-in inspection and prepare a mandatory report. Had he done so it would be possible to determine what negative changes if any, had occurred during this tenancy

## Result

The landlord is entitled to a monetary award of \$6798.55.

## Conclusion

I award the tenants \$3000.00 plus recovery of their \$100.00 filing fee. I award the landlord \$6798.55 plus recovery of the \$100.00 filing fee. The landlord is entitled to a net award of \$3798.55. I authorize the landlord to retain the tenants' \$1000.00 security deposit in reduction of the net award and I grant the landlord a monetary order against the tenants for the remainder of \$2798.55.

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: June 28, 2019

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Residential Tenancy Branch