



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BRADSHAW PROPERTY MANAGEMENT and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

On March 17, 2019, the Tenants made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This Application was set down for a hearing on July 5, 2019 and was subsequently adjourned to be heard on September 12, 2019 as there was not enough time to complete the hearing initially.

Both Tenants attended the adjourned hearing while C.T. attended the hearing as an agent for the Landlord. All parties provided a solemn affirmation.

As per the original hearing and the Interim Decision dated July 8, 2019, the Tenants’ evidence package served on March 21, 2019 was accepted; however, their evidence served to the Landlord on July 2, 2019 was excluded and will not be considered when rendering this decision. With respect to the Landlord’s evidence, I have accepted the submissions made by the Landlord.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation?

- Are the Tenants entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 1, 2018 as a month to month tenancy and the tenancy ended when the Tenants gave up vacant possession of the rental unit on November 30, 2018. Rent was established at \$1,295.00 per month, due on the first day of each month. A security deposit of \$647.50 and a pet damage deposit of \$323.75 were also paid. A signed tenancy agreement was submitted as documentary evidence.

All parties agreed that a move-in inspection report was conducted on October 1, 2018 with the Tenants and a move-out inspection report was conducted with the Tenants on November 30, 2018. A signed copy of the move-in and move-out inspection report was submitted as documentary evidence. The Tenants provided a forwarding address in writing on the bottom of this inspection report.

The Tenants advised that they were seeking compensation in the amount of **\$250.00** to recoup the cost of moving in as they were told by C.T. that they could move into the rental unit in the afternoon and they “assumed” that meant 12:00 – 1:00 PM. They attempted to contact C.T. for a specific move-in time but they never received a response. They eventually saw him at the rental unit and received the keys at 5:00 PM. Their initial plan was to move in earlier and scheduled help to do this, and then they scheduled another truck to help them in the evening. However, as they were granted access to the rental unit so late in the day, they were not able to move in all their belongings. They estimated that as a result of this delay, it took them 10 additional hours to move, at a cost of approximately \$25.00 per hour. They referenced letters, submitted as documentary evidence from the people they had help them move, to corroborate their position. They also submitted an invoice, as documentary evidence, to outline the costs associated with this claim

C.T. advised that the carpets were cleaned at 11:00 AM on the morning of October 1, 2018 and required time to dry, that cleaning was being done on this day as well, and

that the Tenants were advised at approximately 1:20 PM that they could move in later in the afternoon, at approximately 5:00 PM. He stated that the Tenants arrived early and had no problem waiting outside with their friends. The Tenants were advised that they could move some items while the cleaning was being done but they elected to wait. He advised that he did not delay the Tenants from being able to move in and the Tenants chose to move the rest of their belongings in over the course of the next week.

The Tenants advised that they were seeking compensation in the amount of **\$193.75** for the cost to clean the rental unit as the rental unit was not provided to them in a suitable condition. They contacted C.T. to advise him of the deficiencies and requested that he send someone to rectify the cleaning issues, but they did not receive a response back. They referenced a number of pictures, submitted as documentary, demonstrating the uncleanliness of the rental unit and they also submitted an invoice outlining the cost of the cleaning as 7.75 hours at a rate of \$25.00 per hour. While the Tenants acknowledged signing the move-in inspection report agreeing to the condition of the rental unit, their position is that the "5:30pm move-in made us feel pressured to sign the inspection, even though the place was unclean."

C.T. advised that the move-in inspection report was signed by the Tenants, that they agreed that the condition of the rental unit was satisfactory, and that they were not rushed to sign the report. While the Tenants provided pictures of what they suggested was unclean, there is no evidence that they actually cleaned and rectified these issues themselves. He stated that the Tenants standard of cleaning is very high, and he offered them compensation for cleaning; however, they declined this offer.

Finally, the Tenants advised that they were seeking compensation in the amount of **\$1,295.00** because there were many issues with the rental unit and it was not an ideal residence for them. This became more evident as they attempted to contact the Landlord multiple times about their concerns, but they did not receive responses from the Landlord. They believe that the Landlord "did not live up to expectations or provide a suitable place to rent." They advised that they had concerns with a repair issue of the washer and dryer. As well, they suggest that the Landlord's notices for entry to show the rental unit were unreasonable as the Landlord outlined that viewings could be done twice daily, every day in November. They submitted a copy of this notice as documentary evidence.

C.T.'s position is that the rental unit was rented for under market value, and as such, the Tenants should be willing to accept some conditions commensurate with the amount of

rent. He advised that a repair was made to the front door and the toilet, which the Tenants confirmed as well. There was a dispute over the nature of the repair of the washing machine however. C.T. advised that despite the times and dates for entry of the rental unit on the notice, he stated that he was cognizant of the Tenants' right to quiet enjoyment and tried to respect this by contacting them to accommodate their schedules. In addition, he advised that the rental unit was only shown two or three times, which the Tenants acknowledged.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 23 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed day.

Section 21 of the *Residential Tenancy Regulations* (the "Regulations") outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenants have a preponderance of evidence to the contrary.

With respect to the Tenants' claims for compensation, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?

- Did the Tenants prove the amount of or value of the damage or loss?
- Did the Tenants act reasonably to minimize that damage or loss?

Regarding the Tenants claims, the first one I will address is the cost associated with moving into the rental unit. While it is the Tenants' belief that they were prevented from moving into the rental unit at a "reasonable time" due to communication issues with the Landlord, there is no provision in the *Act* which requires that the Tenants be allowed to take possession of the rental unit at a specific time on the day that the tenancy begins. Without some evidence that the Landlord agreed to allow the Tenants to move in at a specific time, and with nothing specifically noted in the tenancy agreement of such, I am not satisfied of the legitimacy of this claim. As such, I dismiss this portion of the Tenants' claims without leave to reapply.

With respect to the Tenants' claims pertaining to the cleanliness of the rental unit, even though the Tenants signed the move-in inspection report agreeing that the rental unit was in satisfactory condition, I do find it important to note that the Regulations allow for consideration of a preponderance of evidence that contradicts the state documented in the report. In reviewing the evidence that the Tenants directed me to, and in conjunction with C.T.'s implication that the Tenants should have been satisfied with the state of the rental unit due to "below market rent" and his acknowledgement that he offered the Tenants compensation for cleaning of the rental unit, I am satisfied that there was some acknowledgment that the rental unit was not provided in an entirely rentable condition at the start of the tenancy. Based on the totality of the evidence before me. I am satisfied that there is a preponderance of evidence contradicting the state of the rental unit on the move-in inspection report, and I am satisfied that the Tenants have established their claim on this point. As such, I award the Tenants a monetary award in the amount of **\$193.75** to cover the costs associated with cleaning the rental unit.

Finally, regarding the Tenants' claims for compensation in the amount of one month's rent, I find it important to note that the onus is on the party making the Application to justify their claim for compensation. As well, the first requirement for establishing a claim is outlining the Landlord's specific non-compliance with the *Act*. During the hearing, while the Tenants made mention of some issues, they spoke broadly of them and did not specifically outline what parts of the *Act* were breached, nor did they refer me to the evidence that they wanted me to rely on for each specific breach. Furthermore, they did not outline how they were affected by each issue nor how that related to a specific monetary amount in their claim for a total of one month's rent. Moreover, part of their

claim for one month's rent was related to the cleaning issue for which they had made an earlier claim for and this amounted to, in essence, a "double dipping" of claims.

Section 59(2) of the *Act* requires the party making the Application to detail the full particulars of the dispute. When reviewing the Tenants' submissions for this claim, I do not find that they have made it abundantly clear to any party that they are certain of the exact amounts they believe are owed by Landlord. The burden is on the Tenants to explain the breaches of the *Act* and then justify the amount of specific compensation they are seeking that is equivalent to the loss that they have suffered. It is not up to me to estimate the general loss and put a monetary value on what I believe is equivalent to a loss that they have themselves experienced. As I am not satisfied that the Tenants outlined their claims precisely, with clarity, I do not find that the Tenants have adequately established a claim for a Monetary Order pursuant to Section 59(2) of the *Act*. In addition, Section 59(5) allows me to dismiss this Application because the full particulars are not outlined. For these reasons, I dismiss this portion of the Tenants' Application without leave to reapply.

As the Tenants were partially successful in their claims, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenants to the Landlord**

Cost of cleaning	\$193.75
Recovery of filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$293.75</b>

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$293.75** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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: September 19, 2019

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Residential Tenancy Branch