



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL, MNRL-S, OPC, OPM, FFL

### Introduction

This teleconference hearing was scheduled in response to an application by the Landlords under the *Residential Tenancy Act* (the “Act”) for monetary compensation and/or compensation for damages, for compensation for unpaid rent, to retain the security deposit towards compensation owed, for an Order of Possession based on a One Month Notice to End Tenancy for Cause (the “One Month Notice”), for an Order of Possession based on a mutual agreement to end the tenancy, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

Both Landlords and the Tenant were present for the hearing. The Tenant confirmed receipt of the Notice of Dispute Resolution proceeding package and one package of evidence from the Landlords. The Tenant also confirmed receipt of the amendment form which was submitted by the Landlords to amend the monetary amount claimed.

The Landlords stated that they did not receive a copy of the Tenant’s evidence. The Tenant stated that it was sent by xpresspost to the address of the rental unit and was delivered on August 21, 2019. The Landlords denied receipt of the documents. The Tenant confirmed that she did not request a signature upon delivery. The Tenant submitted a screenshot from the Canada Post website showing delivery on August 21, 2019. The Landlords confirmed that one of them conducts business in one of the units in the residential property.

As stated in Section 88(c) of the *Act*, documents may be served by mail or registered mail to an address where the person resides or the business address of the landlord. As I do not find sufficient evidence before me to establish that the Landlords reside at the address of the rental unit and I find that they are individual landlords and not a corporation, I do not find that they were served in accordance with the *Act*. Therefore, in

the absence of a signature upon delivery or other confirmation of service, I am not satisfied that the Landlord received the documents. Accordingly, I do not accept the Tenant's evidence and it will not be considered in this decision.

During the hearing the Tenant noted that she did not receive a second evidence package referenced by the Landlords but only received one evidence package which included videos and utility bills. The Landlords stated that this second package of evidence was served to the Tenant at the address of the rental unit after she had moved out and noted that the package was not claimed. As the Tenant did not reside at the address at the time it was sent, I do not find that this second package was served to the Tenant in accordance with the *Act*. Therefore, the Landlords' second evidence package is not accepted and will not be considered in this decision. This decision will be based on the Landlords' accepted evidence as well as the verbal testimony of both parties.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary Matters

The Landlords applied for an Order of Possession based on a One Month Notice and an Order of Possession based on a mutual agreement to end the tenancy. However, at the outset of the hearing the parties confirmed that the Tenant moved out on August 7, 2019 and the Landlords have possession of the rental unit back. As such, the Landlords confirmed that they are withdrawing their claims for an Order of Possession. Pursuant to Section 64(3)(c) of the *Act*, I amend the application to remove the claims for an Order of Possession. This decision will address the Landlords' claims for monetary compensation, to retain the security and pet damage deposits, and for the recovery of the filing fee.

### Issues to be Decided

Are the Landlords entitled to monetary compensation and/or compensation for damages?

Are the Landlords entitled to compensation for unpaid rent?

Should the Landlords be authorized to retain the security deposit and/or pet damage deposit towards compensation owed?

Should the Landlords be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy started on January 6, 2019 and ended on August 7, 2019 and was on a month-to-month basis. Rent in the amount of \$1,600.00 was due on the first day of each month. The Tenant paid a security deposit of \$800.00 and a pet damage deposit of \$800.00, both of which the Landlords are still holding. The tenancy agreement was submitted into evidence and states that the tenancy started on January 1, 2019 but confirms the rest of the details as stated by the parties.

The Landlords have applied for compensation in the amount of \$7,836.00 as indicated on an amendment form and a Monetary Order Worksheet. This includes unpaid rent for the months of June, July, August and September 2019 in the amount of \$1,600.00 per month. The Landlords testified that they served the Tenant with a One Month Notice to End Tenancy for Cause (the "One Month Notice") and the Tenant did not move out on the effective end of tenancy date of the notice. A copy of the One Month Notice was submitted into evidence dated June 6, 2019. The effective end of tenancy date was noted as June 30, 2019. The Landlords also submitted a copy of a mutual agreement to end the tenancy on July 6, 2019 which was signed on June 30, 2019.

The Landlords testified that as the Tenant did not move out as per the notices and did not advise them as to when she would be moving out, they were unable to advertise the rental unit for re-rental. They realized that she left as of August 7, 2019 but noted that due to furniture left behind by the Tenant they have still not advertised the rental unit. The Landlords stated that they did not receive any money towards June, July, August or September 2019 rent.

The Tenant stated that she spoke with the Landlord's spouse regarding the need for an extra month to move and that they agreed that the Tenant's deposits could be put towards unpaid rent. The Tenant stated that she is in agreement that she owes rent for June and July 2019 but disputed that she owes any rent for August and September 2019. She submitted that she was unable to move out right away as her foot was

injured when the shower door at the rental unit fell on her. She stated that although she signed a mutual agreement, she was pressured to do so while on pain medication.

The Landlords are also seeking compensation in the amount of \$55.14 for a package that they stated was delivered to the rental unit and not received by them. They stated that there was a shared mailbox at the rental unit due to one Landlord working in the lower level unit. They noted that they were supposed to receive a package on June 20, 2019 and that they saw it delivered and received by the Tenant on surveillance video. They stated that \$55.14 is the cost of delivery of the package.

The Tenant stated that she did not receive any packages for the Landlords and denied the claim that she took the package.

The Landlords have also claimed \$140.00 for the cost of garbage removal from the residential property. They stated that the Tenant left a significant amount of garbage behind which required them to pay excess garbage disposal fees. They submitted photos of the garbage left behind and stated that this included broken furniture and other items disposed of by the Tenant.

The Tenant testified that the tenancy agreement was for her to pay 60% of the utilities and therefore she will only pay 60% of the amount claimed. The Tenant also noted that the information she received from the Landlords was that the cost was approximately \$50.00 or \$60.00 for garbage removal and therefore she will pay 60% of this amount. The Tenant stated that she was unable to remove the garbage due to her injured foot. The Tenant later agreed that she was to be responsible for 85% of the utilities.

The Landlords stated that the arrangement for the utilities was that the Tenant would pay 85%, but that there was no arrangement for the garbage. They stated that since the excess garbage was all from the Tenant she should be responsible for the cost.

The Landlords have also claimed utility bills which includes a BC Hydro bill for June and July in the amount of \$171.96, and a gas bill for June to August 2019 in the amount of \$68.55. The Landlords stated that the amount claimed is 85% of the bills as agreed upon. They submitted a copy of the BC Hydro bill for June and July 2019, as well as three gas bills for June, July and August 2019.

The Tenant agreed that she was to pay 85% of the utility bills and agreed to pay for July 2019 but not for any amount for August or September 2019.

Lastly the Landlords have claimed \$1,000.00 for cleaning and repairs. They stated that the washer and dryer was in the shared common area of the residential property and was damaged when paint was put into the appliances. They stated that on August 1, 2019 they posted a notice for the Tenant to clean the washer and dryer and noted that although they have not done so yet they will have to purchase new appliances.

The Landlords also testified as to a broken door lock on the door to enter the laundry room which they stated was damaged by the Tenant on the Tenant's side of the door. The Landlords stated that \$1,000.00 is their estimate for replacement of the appliances and for the new door lock.

The Tenant testified that there was no paint in the washer or dryer and that she does not know anything about a broken door.

The parties agreed that the Tenant did not provide a forwarding address.

### Analysis

As the Landlords have applied for compensation, I refer to Section 7 of the *Act* which states the following:

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I also reference *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* which outlines a four-part test for determining if compensation is due as follows:

- 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.

Regarding the Landlords' claim for unpaid rent, the Tenant was in agreement that she did not pay June and July 2019 rent and therefore I find that she owes \$1,600.00 for both of these months. As for August rent, as the Tenant moved out on August 7, 2019 and the parties agreed that rent was due on the first day of each month, I find that the Tenant owed rent as due on August 1, 2019 in the amount of \$1,600.00 as per the tenancy agreement and as stated in Section 26 of the *Act*. By not paying rent as due on August 1, 2019, I find that the Tenant was in breach of the *Act*.

While a party claiming a loss has a duty to mitigate their losses, I accept the evidence before me that establishes that the Tenant did not move out as agreed upon in a mutual agreement and therefore find that the Landlords did not know exactly when the Tenant was moving out. As such, I find that it would have been difficult to advertise the rental unit for re-rental for August 1, 2019.

However, I do find that the Landlords should have advertised the rental unit once they were aware that the Tenant moved out and this would have minimized the potential loss of rental income for September 2019. Although the Landlords claimed that they were unable to re-rent due to the items left behind by the Tenant, the *Residential Tenancy Regulation* outlines a process for dealing with abandoned property in Section 24, which does not state that the items must be kept in the rental unit. As such, I am not satisfied that the Landlords took reasonable steps to mitigate their losses for September 2019 and I decline to award compensation for this month.

Regarding the claim for missing mail, I do not find that the Landlords, who have the burden of proof in this matter, established that they have met the four-part test regarding this claim. I am not satisfied that the Tenant breached the *Act*, *Regulation* and/or tenancy agreement. Should the Landlords believe that mail was stolen, I find this to be an issue outside of the tenancy legislation. I decline to award compensation for this claim.

As for the claim for garbage removal, I accept the photos submitted into evidence that show a significant amount of excess garbage left behind and also find that the Tenant did not dispute that she left garbage behind. While the Tenant offered to pay a portion of the cost, I find that she should be responsible for 100% of the costs incurred.

As stated in Section 37 of the *Act*, at the end of the tenancy a tenant must leave the rental unit reasonably clean. As I accept the evidence before me that the unit was not reasonably clean due to the garbage left behind, I find that the Tenant was in breach of the *Act* and the Landlords should be compensated for the loss. Although I do not have

accepted evidence before me of the total amount paid for the garbage removal, I accept the amount claimed by the Landlord due to the amount of garbage shown in the photos and find the amount paid to be reasonable. Therefore, I award the Landlords \$140.00 for garbage removal.

Regarding the Landlords' claim for the utility bills, the Tenant agreed to pay 85% of the bills for July 2019 only, but not for August or September. As with the claim for unpaid rent, I find that the Tenant was still responsible for the utility bills through August 2019 due to residing in the rental unit until August 7, 2019 and the time in August that would have been required by the Landlords to remove the belongings and garbage left behind. I also note that the Landlords did not claim utilities for September 2019.

Therefore, I find that the Landlords have established that they are entitled to 85% of the utility bills up to August 2019. As the BC Hydro bill submitted by the Landlords is for the period of May 11, 2019 to July 11, 2019, I find that the Tenant is responsible for 85% as agreed upon. Therefore, I award the Landlords \$171.96 for the BC Hydro bill. As the Landlords submitted a gas bill for June 2019 in the amount of \$31.51, for July 2019 in the amount of \$19.18, and August 2019 in the amount of \$29.96 for a total of \$80.65, I find that the Tenant owes 85% of these three bills in an amount of \$68.55.

Regarding the Landlords' claim for the repair of the door lock and replacement of the washer and dryer, I do not find that the Landlords submitted sufficient evidence to establish their claim. In the absence of evidence that would establish that the Tenant was responsible for any damage and that would establish the value of their loss, I do not find that the Landlords met the burden of proof in the four-part test. Therefore, I decline to award any compensation for damages. This claim is dismissed, without leave to reapply.

As the Landlords were partially successful with their application, pursuant to Section 72 of the *Act* I award the recovery of the filing fee paid for the Application for Dispute Resolution in the amount of \$100.00.

As the Landlords have not yet received the Tenants forwarding address, I find that they were within their rights to retain the security deposit and pet damage deposit, pursuant to Section 39 of the *Act*. Therefore, as they are still in possession of the deposits, they may retain these towards compensation owed. The Landlords are granted a Monetary Order in the amount outlined below:

June 2019 rent	\$1,600.00
July 2019 rent	\$1,600.00
August 2019 rent	\$1,600.00

Garbage removal	\$140.00
BC Hydro bill June – July 2019	\$171.96
Gas utility bills June – August 2019	\$68.55
Recovery of filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$800.00)</i>
<i>Less pet damage deposit</i>	<i>(\$800.00)</i>
<b>Total owing to Landlord</b>	<b>\$3,680.51</b>

### Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a **Monetary Order** in the amount of **\$3,680.51** as outlined above. The Landlords are provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant 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

---

Residential Tenancy Branch