



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL, 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, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

Both Tenants were present for the teleconference hearing, as was one Landlord and a family member who was present as an agent for the second Landlord (the “Landlords”). The Tenants confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlords’ evidence. Although the Tenants questioned the method of service of the evidence as it was placed in their mailbox, it was confirmed that this is an acceptable method of service for the evidence as stated in Section 88(f) of the *Act*. The Landlords confirmed service of the Tenants’ evidence with the exception of photos which they stated they did not receive. The Tenants confirmed that the photos were sent to the Landlords by email. As email is not a method of service under Section 88 of the *Act*, the Tenants’ photos are not accepted and will not be considered as evidence in this decision.

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.

### Issues to be Decided

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

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 which were confirmed by the tenancy agreement submitted into evidence. The tenancy started on October 14, 2017. Current rent in the amount of \$1,225.00 is due on the 14<sup>th</sup> day of each month. A security deposit of \$625.00 was paid at the start of the tenancy.

The Landlords are seeking total compensation in the amount of \$1,210.00. They submitted a Monetary Order Worksheet which outlines each of the monetary claims. The first claim is for \$250.00 which the Landlords stated is for the Tenants providing false information at a previous arbitration hearing. Both parties referenced the decision from the previous hearing and the Tenants submitted a correction request letter for that decision dated July 18, 2019. The file number for the previous hearing is included on the front page of this decision.

The Landlords testified that the false information provided by the Tenants at the previous hearing included information about how many people were residing in the rental unit as well as information about a dispute between the parties regarding laundry use in the residential property. The Landlords stated that the Tenants presented testimony about a rigid laundry schedule for the shared laundry facilities, while they were accommodating and flexible in providing the Tenants access.

The Landlords submitted copies of text messages into evidence which they stated show that the Tenants' children were not residing in the rental unit. They also stated that the text messages demonstrate that the Landlords allowed reasonable access to the shared laundry based on the Tenants' schedules and requests.

The Landlords clarified that the \$250.00 claimed is \$100.00 for each of the previous two dispute resolution proceedings filed by the Tenants in which the Landlords were ordered to pay the filing fee, as well as \$50.00 for emotional grief.

The Tenants stated that they had advised the previous arbitrator that their children were not currently residing at the rental unit. They also stated that they did not provide false information regarding laundry use as they were not provided enough time to complete laundry. The Tenants also noted that a decision regarding laundry use had already been made in the previous hearing.

The Landlords are also seeking \$250.00 for a violation of their privacy by the Tenants. They stated that in the past two dispute resolution proceedings the Tenants provided video evidence that was shared with the Landlord through a YouTube link. The Landlords noted that the videos were of conversations between themselves and the Tenants regarding laundry use and were recorded without their knowledge.

The Landlords submitted a copy of information from the Residential Tenancy Branch website which states that digital evidence must be on a USB stick, CD or DVD and not posted on 'web applications which are widely accessible'. The Landlords stated that they feel as though the amount of \$250.00 is justifiable for this violation of privacy.

The Tenants stated that they did not have another means of serving the video to the Landlords so posted it privately on YouTube. They also stated that the Landlords' faces and names were not on the videos. The Tenants noted that they were not asked by the Landlords to take the videos down.

The Landlords responded that one of their faces is visible in the first video and that the first name of one of the Landlords was included on the video description.

The Landlords have also claimed \$250.00 as compensation for threats of dispute resolution from the Tenants. They testified that the Tenants would threaten arbitration instead of attempting to resolve an issue peacefully with the Landlords. They provided an example of a time when the Landlord was late in opening the laundry room door for the Tenants during their scheduled laundry time. They stated that the Landlord made an error due to memory issues and was going to apologize and resolve the issue, but the Tenants refused to listen and threatened arbitration instead, without discussing a possible resolution.

The Landlords stated that before a resolution could be reached, the Tenants provided them with a threatening letter which was submitted as evidence. In the letter dated May 6, 2019 the Tenants note that the laundry door was locked twice during their laundry time and that if this is not resolved they will take further action.

The Landlord stated that after receipt of this letter on May 6, 2019, the Tenants filed an Application for Dispute Resolution on May 8, 2019, thus not providing time to resolve the issue other than through arbitration.

The Tenants responded by stating that as the Landlord had not unlocked the laundry room door two weeks in a row that they were within their rights to file for dispute resolution. They also noted that at the time of the incident in question the Landlord did not respond calmly and therefore they were not able to work with the Landlord to resolve the issue.

The Landlords are also seeking \$360.00 for lost wages from attending the previous dispute resolution proceeding that was filed by the Tenants. Landlord RK submitted employment payment information showing an average of \$360.00 for a day of wages. He stated that he had to book the full day off to attend the previous hearing and noted that the Tenants' application was frivolous.

The Tenants stated that they have all lost wages due to time spent with the disputes but that they had the right to file for dispute resolution when they were not provided adequate access to the shared laundry. They also noted that they were awarded monetary compensation in the previous hearing. The Tenants stated that the Landlord could have taken an hour off of work and made up the time later and they questioned whether he sets his own schedule for work given the days when his car is in the driveway at the residential property.

### 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.

While the Landlords provided testimony regarding why they feel they are entitled to monetary compensation, I do not find sufficient testimony and evidence before me that the Tenants were in breach of the *Act*, *Regulation* and/or tenancy agreement regarding any of the monetary claims of the Landlords.

Regarding the Landlords' claim of \$250.00 for the Tenants providing false information in a previous hearing, I do not find that the Landlords established that the Tenants breached the *Act*, *Regulation* and/or tenancy agreement and that they experienced a loss as a result. As stated by rule 6.6 of the *Rules of Procedure*, the onus to prove a claim is on the party making the claim, which in this matter is the Landlords.

I also note that had the Landlords believed that the Tenants used fraud as a way to get their desired outcome at a previous hearing, they had the right to file for a review of the decision pursuant to Section 79 of the *Act*. The Landlords also stated that while \$50.00 of the amount claimed was for grief, that \$200.00 was for the filing fees from previous dispute resolution proceedings. However, when filing fees are claimed, they are dealt with in the decision for that hearing and cannot be decided on again at a later hearing. As such, I cannot award a filing fee which was already decided upon. As stated, I also do not find that the Landlords experienced a loss of \$50.00 due to the Tenants breach of the *Act*, *Regulation* and/or tenancy agreement.

As for the claim for violation of privacy due to the posting of a video on YouTube, while I do find that this was not an adequate method of service, I fail to find that this was a direct breach of the *Act*. Instead, I find that issues with service of evidence should have been addressed at the previous hearing. 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:

- 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.

To be awarded compensation, a party claiming compensation must meet all four of the above points in the test. With the privacy concerns of the Landlords, I am not satisfied that they have met any of the four points outlined above. The Landlords did not reference any section of the *Act* or *Regulation* that was breached and did not reference a clause in the tenancy agreement which the Tenants were not in compliance with.

Regarding the claim for compensation for the Tenants threatening dispute resolution, I am also not satisfied that this meets the requirements of Section 7 of the *Act*, or the

four-part test. Both parties are at liberty to file an Application for Dispute Resolution should they believe that they have reason to do so and it would be up to the arbitrator of that proceeding to decide the outcome.

Accordingly, I do not find sufficient evidence before me to establish that the Landlords should be compensated \$250.00 for the Tenants filing for dispute resolution. I also note that both parties referenced two previous dispute resolution proceedings; one regarding a previous notice to end tenancy and one regarding the dispute over the use of shared laundry. Based on this testimony, it does not seem as though the Tenants were abusing their right to file for dispute resolution.

While the Landlords referenced a letter from the Tenants in which the Tenants stated that they would take action, I do not find sufficient evidence to support the claim of constant threats of dispute resolution and to establish that the Landlords experienced a loss as a result. Therefore, I am not satisfied that the Landlords experienced a monetary loss due to the Tenants' non-compliance.

As for the Landlords' claim for lost wages, I decline to award any compensation. Again, I do not find that the Landlords established that the Tenants were in breach of the *Act*, as I find that the Tenants were within their right to file an Application for Dispute Resolution and that both parties have a right to attend the hearing. I also find that both parties have the right to file an Application for Dispute Resolution, as the Landlords have done with this application. Costs may be incurred by both parties through a dispute resolution, such as time off work and through processes such as sending registered mail. I do not find that this claim meets any of the points in the four-part test and therefore decline to award any compensation.

I do note that as stated in *Residential Tenancy Policy Guideline 16* that parties may be awarded compensation for "aggravated damages" which are for intangible damages or loss. However, as stated in the policy guideline, aggravated damages are rarely awarded and must also be requested specifically in the application. In this matter, I do not find that the Landlords specifically requested compensation for aggravated

damages in their application and do not find that the Landlords' claims meet the requirements for compensation for aggravated damages.

As the Landlords were not successful with the Application for Dispute Resolution, I decline to award the recovery of the filing fee. The application is dismissed, without leave to reapply.

### Conclusion

The Application for Dispute Resolution is dismissed, without leave to reapply.

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 24, 2019

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Residential Tenancy Branch