



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on July 19, 2019 (the “Application”). The Landlords sought:

- Compensation for damage to the rental unit;
- Compensation for monetary loss or other money owed;
- To recover unpaid rent;
- To keep the security deposit; and
- Reimbursement for the filing fee.

The Landlords appeared at the hearing. The Tenant did not appear. I explained the hearing process to the Landlords who did not have questions when asked. The Landlords provided affirmed testimony.

The Landlords submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlords’ evidence.

The Landlords testified that the hearing package and evidence were sent by registered mail on July 25, 2019. The Landlords testified that two packages were sent, one to the forwarding address provided by the Tenant and one to a similar address as the address provided by the Tenant did not appear correct. The Landlords provided Tracking Number 1 and 2. I looked these up on the Canada Post website which shows the package with Tracking Number 1 was delivered and signed for by the Tenant July 30, 2019.

Based on the undisputed testimony of the Landlords and Canada Post website information, I am satisfied the Tenant was sufficiently served with the hearing package and evidence pursuant to section 71(2) of the *Residential Tenancy Act* (the “Act”). Based on the Canada Post website information, I find the Tenant received the hearing package and evidence July 30, 2019, in sufficient time to prepare for, and appear at, the hearing.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlords were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Are the Landlords entitled to compensation for damage to the rental unit?
2. Are the Landlords entitled to compensation for monetary loss or other money owed?
3. Are the Landlords entitled to recover unpaid rent?
4. Are the Landlords entitled to keep the security deposit?
5. Are the Landlords entitled to reimbursement for the filing fee?

#### Background and Evidence

The Landlords sought the following compensation:

1	Ceiling repair	\$300.00
2	Unpaid utilities for January 2019	\$236.65
3	Filing fee for File Number 1	\$100.00
4	Unpaid rent for February 2019	\$1,793.75
5	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$2,530.40</b>

A written tenancy agreement was submitted as evidence. The tenancy started October 01, 2017 and was for a fixed term ending September 30, 2018. It then became a month-to-month tenancy. Rent was originally \$1,750.00 per month due on the first day of each month. The Tenant paid a \$875.00 security deposit. The agreement is signed by the Landlords and Tenant.

The tenancy agreement states that the Tenant is responsible for 50% of the monthly hydro, gas, garbage pickup and internet bills for the home.

The Landlords submitted a Notice of Rent Increase showing the rent was increased from \$1,750.00 to \$1,828.75 starting January 01, 2019. The Landlords testified that an amended Notice of Rent Increase was provided to the Tenant with a new rent amount of \$1,793.75.

Landlord J.C. testified that, on January 10, 2019, the Tenant gave notice that she was moving at the end of the month.

At first, Landlord J.C. testified that the Tenant moved out of the rental unit near the end of January. Landlord J.C. later testified that the Tenant asked to move out February 02, 2019 and said she had moved out February 05, 2019.

Landlord J.C. testified that the Tenant paid January rent and December utilities.

Landlord J.C. further testified as follows.

The Tenant provided her forwarding address in a letter received July 11, 2019.

The Landlords did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlords could keep some or all of the security deposit.

There was no move-in or move-out inspection done. The Tenant was not offered two opportunities to do these inspections.

The Landlords submitted the letter from the Tenant with her forwarding address.

### ***Ceiling repair***

Landlord J.C. testified as follows. The ceiling was freshly done prior to move-in. After the Tenant moved out, there was a one meter long scrape across the ceiling. The damage is shown in the photo submitted. The ceiling needs to be sanded down, smoothed out where there is an indent and re-painted. She contacted the company that did the ceiling and obtained an estimate for the repair. This is in the email submitted.

Landlord R.C. testified that the estimate is only to repair the damaged portion of the ceiling.

The Landlords submitted a photo of the damage.

The Landlords submitted an email quote of \$300.00 to \$400.00 for the ceiling repair.

### ***Unpaid utilities for January 2019***

Landlord J.C. testified as follows. The Tenant was in the rental unit in January. The Tenant was required to pay for half of the utilities further to the tenancy agreement. The Tenant did not pay the utility bills for January. The Tenant was sent a request for rent and payment of utility bills with the hydro, gas, garbage and internet bills attached on February 01, 2019.

Landlord J.C. testified that the Landlords are on an equal payment plan for hydro and gas. Landlord J.C. testified that the Landlords are seeking the following amounts based on the bills submitted:

- Hydro:  $\$141.08 / 2 = \$70.54$
- Internet:  $\$95.20 / 2 = \$47.60$
- Garbage:  $\$100.50 / 2 = \$50.25$
- Gas:  $\$136.52 / 2 = \$68.26$

### ***Filing fee for File Number 1***

Landlord J.C. testified as follows. The Landlords previously submitted an application for dispute resolution with a request to serve the Tenant by email. At the hearing, the Arbitrator told the Landlords they had to apply again because they could not serve by email and did not have approval to serve by email before attending the hearing. The Tenant was told about the application and knew about the hearing but chose not to respond to the email. The Tenant should be responsible for the filing fee.

The Landlords submitted the decision for File Number 1.

### ***Unpaid rent for February 2019***

Landlord J.C. testified as follows. The Tenant gave notice January 10, 2019 ending the tenancy at the end of January. The Tenant was required to give 30 days notice. The Tenant did not pay rent for February 2019.

The Landlords submitted a text message from the Tenant ending the tenancy. It is dated January 10, 2019. The Tenant states that she will be moving at the end of the month.

The Landlords submitted an email to the Tenant dated February 13, 2019 asking for February rent and payment for utilities. It states that the bills are attached and provides a breakdown of amounts owing.

The Landlords submitted an email from the Tenant dated February 13, 2019 indicating she cannot afford to pay February rent.

### Analysis

Section 7(1) of the *Act* states that a party who does not comply with the *Act* or their tenancy agreement must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

Section 67 of the *Act* states:

67 ...if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

### ***Security Deposit***

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the undisputed testimony of Landlord J.C., I accept that the Tenant was not offered two opportunities to do a move-in or move-out inspection. Therefore, the Tenant did not extinguish her rights in relation to the security deposit under sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlords extinguished their rights in relation to the security deposit as extinguishment relates to claims for damage and the Landlords have claimed for unpaid rent for February of 2019.

Based on the undisputed testimony of Landlord J.C. and the text message from the Tenant submitted, I accept that the Tenant moved out of the rental unit at the end of January or early February. I find the tenancy ended for the purposes of section 38(1) of the *Act* at the end of January or early February.

Based on the undisputed testimony of Landlord J.C. and letter from the Tenant submitted, I accept that the Tenant provided the Landlords with her forwarding address in writing July 11, 2019.

The Landlords had 15 days from July 11, 2019 to repay the security deposit or file a claim against it pursuant to section 38(1) of the *Act*. The Application was filed July 19, 2019, within the 15-day time limit. The Landlords complied with section 38(1) of the *Act*.

### ***Ceiling repair***

Section 37(2) of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

Based on the undisputed testimony of Landlord J.C. and the photo submitted, I accept that the ceiling of the rental unit was undamaged on move-in and damaged on move-out. I accept that the Tenant damaged the ceiling.

Based on the undisputed testimony of Landlord J.C. and the photo submitted, I accept that the damage to the ceiling is beyond reasonable wear and tear. In determining this, I have considered the location of the damage. I do not find damage to a ceiling to be the usual type of

damage one would expect to occur over time from the normal use of the rental unit. I accept that the Tenant breached section 37(2) of the *Act*.

I accept that the Landlords need to repair the damage and accept the undisputed testimony of Landlord J.C. in relation to the required repairs.

Based on the undisputed testimony of Landlord J.C. and the email quote submitted, I accept that the estimate for the repair is not more than \$300.00 to \$400.00. I note that the author of the email states, "I don't see how it could be more than \$300 - \$400.00". I do not find this to be a particularly reliable quote of the actual cost of the repair given the wording of the email.

I award the Landlords \$200.00 for the ceiling repair. I arrive at this amount based on the following. I find the photo submitted shows the damage is beyond reasonable wear and tear but not significant. I find the email quote submitted does not provide a reliable indication of the actual cost of the repair. The fact that this tenancy started October 01, 2017 and taking into account the useful life of interior paint which is only four years.

#### ***Unpaid utilities for January 2019***

Based on the undisputed testimony of Landlord J.C. and the written tenancy agreement submitted, I find the Tenant was responsible for paying 50% of the hydro, gas, garbage pickup and internet bills for the duration of the tenancy.

Based on the undisputed testimony of Landlord J.C. and the text from the Tenant submitted, I accept that the Tenant lived in the rental unit in January of 2019. The Tenant was required to pay her portion of the utilities for January.

Based on the undisputed testimony of Landlord J.C., I accept that the Tenant did not pay for utilities for January.

The Tenant was not responsible for paying utilities once she vacated the rental unit. I note that the Landlords have not sought compensation for unpaid utilities past January.

I have reviewed the bills submitted and find the following.

The garbage bill appears to cover service from January 01, 2019 to March 31, 2019. The Landlords did not refer to this or explain this at the hearing. The Tenant is only responsible for paying for January when she was in the rental unit. I find the Landlords are only entitled to 1/3 of the requested amount being \$16.75.

The Landlords are entitled to \$70.54 as requested for hydro.

The Landlords are entitled to \$68.26 as requested for gas.

The internet bill shows it is for the period February 09, 2019 to March 08, 2019. The Landlords did not refer to this or explain this at the hearing. I am not satisfied the Tenant is responsible for this amount.

***Filing fee for File Number 1***

I have read the decision on File Number 1. I find the previous application was dismissed due to the Landlords' request for substituted service not being processed and the Landlords not following up in relation to the request. I do not accept that the Tenant is at fault for the outcome as suggested by the Landlords. I do not find the Tenant is responsible for reimbursing the Landlords for the filing fee on File Number 1.

***Unpaid rent for February 2019***

Section 45 of the *Act* sets out how a tenant can end a month-to-month tenancy and states:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 53 of the *Act* addresses incorrect effective dates and states:

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section...

Based on the undisputed testimony of Landlord J.C. and the text from the Tenant submitted, I accept that the Tenant gave notice ending the tenancy on January 10, 2019. The Tenant purported to end the tenancy at the end of January.

Pursuant to section 45 and 53 of the *Act*, the Tenant's notice was not effective until February 28, 2019, one month after the Landlords' received it and the day before the day in the month rent is payable under the written tenancy agreement which I accept as accurate. The Tenant is responsible for paying February rent.



Based on the undisputed testimony of Landlord J.C. and email from the Tenant submitted, I accept that the Tenant did not pay February rent.

Based on the undisputed testimony of Landlord J.C. and in part on the Notice of Rent increase, I accept that rent was \$1,793.75 at the end of the tenancy. The Landlords are entitled to recover this amount.

### ***Filing fee***

Given the Landlords were successful in this application, I award the Landlords reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In summary, the Landlords are entitled to the following:

1	Ceiling repair	\$200.00
2	Unpaid utilities for January 2019	\$155.55
3	Filing fee for File Number 1	-
4	Unpaid rent for February 2019	\$1,793.75
5	Filing fee	\$100.00
<b>TOTAL</b>		<b>\$2,249.30</b>

The Landlords can keep the \$875.00 security deposit pursuant to section 72(2) of the *Act*. The Landlords are issued a monetary order for the remaining \$1,374.30 pursuant to section 67 of the *Act*.

### **Conclusion**

The Landlords are entitled to compensation in the amount of \$2,249.30. The Landlords can keep the \$875.00 security deposit. The Landlords are issued a monetary order for the remaining \$1,374.30. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it 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 *Act*.

Dated: November 12, 2019

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**Residential Tenancy Branch**