



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT MNDCT RP

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to sections 32 and 62; and,
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The tenants testified that they served the notice of dispute hearing and their evidence on the landlord. The landlord testified that he did not receive a copy of the notice of hearing or evidence. However, the landlord testified that he did not object to the hearing of this matter or the admissibility of the tenants' evidence.

Since both parties attended the hearing and the landlord did not object to the hearing or the admissibility of the tenants' evidence, I find that the parties were both sufficiently served pursuant to section 71(2)(c) of the *Act*.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Are the tenants entitled to an order to the landlord to make repairs to the rental unit pursuant to sections 32 and 62?

Are the tenants entitled to recover the filing fee for this application pursuant to section 72?

### Background and Evidence

The tenants provided a tenancy agreement showing that the tenancy started on December 1, 2017. The monthly rent was initially \$1,500.00. The tenants testified that this rent later increased to \$1,560.00.

The tenants testified that a police raid occurred at the property on February 2, 2019. The tenants testified that, during the raid, the police officers damaged the property and deployed tear gas which rendered the property unlivable until March 16, 2019. The tenants testified that the police provide alternative accommodations to the tenants. In addition, the tenants were travelling out of the country for part of the time the rental unit was being remediated.

The tenants testified that they paid the monthly rent of \$1,560.00 on February 1, 2019 and the now seek a refund of this rent payment.

The tenants also expressed concerns that the rental unit may not have been satisfactorily remediated and they are concerned about exposure to tear gas residue in the rental unit. The tenants are requesting an order that the landlord provide a report verifying that the rental unit is not safe for habitation.

### Analysis

The parties agreed that the landlord would repair the broken door handle. The parties also agreed that the tenants would not be responsible for the damages to bedroom walls. Accordingly, based on the agreement of the parties, I order that the landlord must repair the broken door handle and that the tenants are not be responsible for the damages to bedroom walls pursuant to section 63 of the *Act*.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of

compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenants to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Section 32 of the *Act* states the landlord has the following duty to maintain the rental unit:

- 32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
  - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find that the landlord has breached the section 32 of the *Act* by failing to provide habitable conditions in the rental unit while the rental unit was evacuated as a result of the police raid.

However, I find that the tenants were provided alternative accommodations by the police while rental unit was being remediated. In addition, I find that the tenants were out of the country during part of the time the rental unit was being remediated.

As a result, I find that the tenants have failed to provide sufficient evidence to establish that they have suffered a loss as a result of the landlord's breach of section 32 of the *Act*. Accordingly, I dismiss the tenants' application for a monetary order.

In addition, I find that the tenants have not provided sufficient evidence to establish that a report is needed to determine whether the premises are safe for habitation. Although, the tenants presented concerns regarding the safety of the rental unit, I find that the tenants did not produce sufficient evidence to establish that the rental unit was not safe and that a safety report was needed. Accordingly, I dismiss the tenants' application for an order requiring the landlord to produce a safety report.

Since the tenants have generally not been successful in their claim, I dismiss the tenants' request for reimbursement of their filing fee pursuant to section 72 of the *Act*.

### Conclusion

Based on the agreement of the parties, I order that the landlord must repair the broken door handle and that the tenants are not be responsible for the damages to bedroom walls pursuant to section 63 of the *Act*. All other claims in the tenants' application is dismissed.

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: December 04, 2019

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Residential Tenancy Branch