



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, RP, OPR, MNR

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to the landlord to make repairs to the rental unit pursuant to section 32.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenants served the landlord with the notice of hearing package and submitted documentary evidence via mail. Both parties also confirmed the landlord served the tenants with their notice of hearing package and submitted documentary evidence via Canada Post Registered Mail on November 22, 2019. The landlord also stated that the amendment to their application was served upon the tenants on December 17, 2019 via Canada Post Registered Mail. The tenants confirmed receipt of this package. Neither party raised any service issues.

I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the *Act*.

During the hearing both parties clarified that the tenants have subsequently vacated the rental unit. As such, the landlord has now confirmed that she now has possession of the rental unit and an order of possession is no longer required. The landlord withdrew

this portion of his claim. The tenants confirmed that that a request to cancel the 10 Day Notice is no longer required. As well, since the tenancy has ended, the tenants no longer require an order for repairs. The tenants' application was cancelled by the tenants

After 59 minutes of extensive discussions the hearing was adjourned. Both parties were advised that a notice of adjournment letter would be sent to each advising them of the new time and date of adjournment. Both parties were also advised that no new evidence was to be submitted, nor would it be accepted.

The tenants provided a new mailing address as they did not file a change of address since submitting their application. The Residential Tenancy Branch Files shall be updated to reflect this change. The tenants stated that a copy of the adjournment letter could be received at the new mailing address. The landlord's agent stated that the adjournment letter could be received via email.

On adjournment the hearing shall proceed with the landlord's remaining amended monetary claim of \$5,084.50.

On March 16, 2020 the hearing was reconvened with both parties present.

At the conclusion of the hearing, the tenants stated that they had moved again and provided a new mailing address. As such, the tenants' file shall be updated to reflect the new mailing address.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, and damage?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on July 15, 2019 on a fixed term tenancy ending on July 15, 2020 as per the submitted copy of the signed tenancy agreement dated July 1, 2017. The monthly rent was \$2,050.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$1,025.00 was paid on July 15, 2019.

Both parties confirmed the landlord served the tenants with a 10 Day Notice dated November 2, 2019 which states in part that the tenants failed to pay rent of \$2,050.00 that was due on November 1, 2019 and provides for an effective end of tenancy date of November 12, 2019.

During the hearing the landlord cancelled part of the claim for the \$60.00 fridge shelf handle as this item was not replaced and a new refrigerator was purchased instead.

The landlord seeks a clarified monetary claim of \$5,084.50 which consists of:

\$2,050.00	Unpaid Rent, November 2019
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\$724.50	Plumbing Repair costs, clogged drains
\$200.00	Air Purifier, missing

The landlord claims that the tenant failed to pay any rent for November and December of 2019. The landlord claim that the tenants vacated the rental unit on November 30, 2019 whereas the tenants argued that they had vacated the rental unit on October 30, 2019. The landlords argued that the tenants may have left in October 2019, there belongings were not removed until late into November 2019. The landlord also argued that if the tenants had indeed vacated the rental unit in October 2019, why then did the tenants dispute the 10 Day Notice dated November 3, 2019 for unpaid rent. The tenants provided direct testimony confirming that no rent was paid as claimed since they had vacated the rental unit at the end of October 2019. The landlord further stated that because the tenants failed to provide any notice and damage was found to the kitchen and bathroom sinks and the bathtub the landlord was unable to re-rent the unit. The landlord stated that the unit was advertised for rent right away with 3-4 showings and was not successful in re-renting the unit until January 1, 2020.

The landlord claim that the tenants caused plumbing issues before leaving. The landlord stated that the landlord was on site at the rental unit on November 12 and 22 when there were no issues. Upon arriving on November 30, 2019, the landlord discovered the kitchen sink, washroom sink and tub dirty and clogged. The landlord stated that a plumber was called who discovered the drain stuck with clothes, kitchen waste and foil paper. The landlord has submitted a copy of the plumbing invoice with the plumbers note regarding the cause for the clogged drains. It states in part, "Clean Drain Stucked with clothes. Cleaned with pipe camera, snake. Lots of Kitchen waste, foil paper." The landlord also submitted photographs of a sink and bathtub with dirt and

debris. The tenants argued that the rental unit was left clean after they had retained a cleaning service to clean the rental unit at the end of tenancy. The tenants also stated that the toilet had been plugged up with mice. The tenants argued that the toilet was fine on move-out.

The landlord also claimed that during the tenancy an Air Purifier was provided to the tenants after they notified the landlord of an issue. The landlord stated that at the end of tenancy, the tenants had removed the Air Purifier and has not returned it. The tenants made no comment on this claim.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenants. The landlord provided undisputed affirmed testimony that the tenants failed to give any notice of their intent to vacate the rental unit. The landlord upon discovering the tenants had vacated the rental unit on November 30, 2019 when their personal belongings were removed right away tried to re-rent the unit. The landlord despite having 3-4 showings was unsuccessful until January 1, 2020.

The landlord provided photographs of the sinks and bathtub showing dirty and debris. In support of the claim, the landlord referred to the submitted copy of the invoice from the plumber dated December 8, 2019 in which the plumber noted "Clean Drain Stucked with clothes. Cleaned with pipe camera, snake. Lots of Kitchen waste, foil paper." The landlord also submitted receipts for each item. Although the tenants disputed this claiming that a professional cleaner was retained prior to the end of tenancy, the tenants failed to provide any supporting evidence on the condition of the rental unit at the end of tenancy.

The landlord provided undisputed affirmed testimony that a air purifier was provided to the tenants during the hearing and that it was removed by the tenants.

On this basis, I find that the landlord has provided sufficient evidence to satisfy me that the tenants failed to provide notice ending the tenancy and left the rental unit damaged requiring a plumber for the drains. I also find that the tenants removed the air purifier provided by the landlord without returning it. The landlord is entitled to the monetary claim of \$5,084.50.

### Conclusion

The landlord is granted a monetary order for \$5,084.50.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the 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: March 18, 2020

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Residential Tenancy Branch