



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FFT, MNDCT

### Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46 of the *Act*;
- a return of the filing fee pursuant to section 72 of the *Act*; and
- a Monetary Order as compensation for damage or loss pursuant to section 67 of the *Act*.

Tenant, S.U., the landlord's son R.S.D. who acted as agent, and the landlord's counsel A.M. attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

All parties confirmed receipt of all relevant documents, while the tenant confirmed receipt of the 10 Day Notice to End Tenancy. All parties are found to have been duly served in accordance with the *Act*.

### Preliminary Issue – Settlement

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of a portion of their dispute.

Both parties agreed to the following final and binding settlement of some issues currently under dispute at this time:

1. Both parties entered into a mutual agreement that this tenancy will end on April 30, 2020 at 1:00 P.M., by which date the tenants and any other occupants will have vacated the rental unit.
2. Both parties acknowledged that this settlement agreement constituted a final and binding resolution of all portion of the tenants' application related to the 10 Day Notice to End Tenancy before me today.

Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable.

#### Issue(s) to be Decided

Are the tenants entitled to a monetary award? Can the tenants recover the filing fee?

#### Background and Evidence

The parties explained this tenancy began in October 2020. Rent is \$2,000.00 per month and two deposits, one for \$1,000.00 (security) and another of \$500.00 (pet) were paid at the outset of the tenancy and continue to be held by the landlord.

The tenants seek a monetary award of \$7,920.00. Tenant S.U. explained this amount represents a return of \$500.00/month rent for the months of October 2019 through March 2020, along with \$980.00/month for the months of January through April 2020 representing lost business income and moving expenses.

Specifically, the tenant argued that the landlord had; failed to complete renovations by the agreed upon deadline (including numerous significant landscaping/adjustments to the outside property), charged rent above the market value, failed to provide a separate mailbox from the upstairs tenants (and the owners themselves), failed to install safety lights to the entrance of the suite, and had caused a mess while attempting to deliver a fridge.

In addition to the amount sought as described above, the tenants applied to recover monies for lost business income as a result of the property's non-compliance with local zoning bylaws. Tenant S.U. argued that the suite failed to meet municipal electrical standards, leading to an overload of the circuitry in the home. This overload in turn caused the power to go out on several occasions and prevented the tenants from

operating any appliances in their home (amongst other things). Tenant S.U. said that this matter was ignored by the landlord and she sought compensation for the loss of revenue the tenants allegedly experienced due to an inability to run various machines and computers associated with their home business. Furthermore, the tenant said she may be unable to gain insurance for her computers, printers and other materials due this zoning issue and a declaration from the city that the suite the tenants occupied was “illegal.” In support of their application, the tenants supplied 140 pages of evidence along with significant oral testimony.

The landlord and their counsel disputed all aspects of the tenants’ application for monetary compensation. Counsel argued, amongst other things, that the tenants had failed to meet the burden of proof as described in the RTB Rules of Procedure, highlighted the 4-point test provided in RTB Policy Guideline #16 and made reference to section 7(1) of the *Act* which notes, “If a landlord does not comply with this Act, the non-complying landlord must compensate the other for damage or loss that results.” The landlord and their counsel argued that numerous issues highlighted by the tenants were beyond their control, specifically the matters related to the extended property renovations which were subject to a stop-work order, and the matter related to the post-box (which they said was a Canada Post issue). Furthermore, the landlord detailed numerous steps they had taken to attend to issues raised by the tenants in relation to the rental unit.

As part of their evidentiary package, the landlord submitted a sworn affidavit that outlined the steps he had taken to address the tenants’ concerns, and detailed (at paragraphs 6 and 12) his understanding of the tenants’ home business and their desire to get a business loan.

All parties present at the hearing agreed that the tenants had failed to pay January 2020 rent on time, which led to the issuance of the 10 Day Notice which was settled above. The tenants further acknowledged they had failed to pay any rent for February and March 2020.

### 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 tenants to prove their claim for a monetary award.

This section must be read in conjunction with *Residential Tenancy Policy Guideline #16* which notes, "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due." I will therefore, as described above be examining whether the landlord failed to comply with the *Act*, regulations or tenancy agreement.

The tenants seek a monetary award of \$7,920.00 related to a return of rent paid due to various alleged failures by the landlord to adhere to the *Act*, along with a loss of business income and moving expenses.

I find no basis to award any portion of the tenants' application as it relates to a return of rent paid due to the fact that the tenants have failed to pay rent for February or March 2020. Issuing an order for a return of rent which remains outstanding would in effect be rewarding the tenants for violating section 26(1) of the *Act* which states, "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent." For these reasons, this portion of the tenants' application is dismissed.

A large portion of tenant S.U. testimony was devoted to her explanation of lost income related to the home business. The tenants have applied for \$980.00 compensation for the months of January, February, March and April 2020. I decline to award any compensation for future compensation in April 2020 as this period has not yet transpired and it is therefore impossible to determine how various market forces may impact a business. I do, however, consider some of the tenants' application as it relates to lost income to be relevant and attributable to the landlords' actions (or more specifically non-actions). I find sufficient evidence was presented to show that the property in question was not adequately equipped with suitable electrical circuitry to accommodate the number of people renting units on the property. Section 32(1) of the *Act* states, "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 the landlord has failed to meet this requirement.

Residential Tenancy Policy Guideline #16 provides direction as follows, “An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to the property, money or services, the value of the damage or loss is established by the evidence provide.”

I find the evidence that the tenants intended to rely on regarding lost orders and future wage growth to be inconclusive as it relied completely on past orders and invoices while presenting no evidence of lost business or accounts for the months in question. It therefore cannot be established by the evidence provided that previous accounts and business adequately reflected future business. Policy Guideline #16 contemplates situations such as this and continues by noting, “An arbitrator may also award compensation where establishing the value of the damage or loss is not as straightforward. *Nominal damages* are a minimal award...where there has been no significant loss or significant loss has been proven, but it has been proven there has been an infraction of a legal right.” I therefore award the tenants an award of \$500.00 in nominal damages for the landlord’s failure to adhere to section 32 of the *Act*.

As the tenants were partially successful in their application, they may recover \$50.00 of the filing fee.

### Conclusion

The landlord is issued an Order of Possession dated April 30, 2020.

The tenants are granted a monetary award of \$550.00 inclusive of a partial return of the filing fee.

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: April 3, 2020

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Residential Tenancy Branch