



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL, MNRL, FFL

### Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage, pursuant to section 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Landlord A.W. testified that the tenant was served with the landlords' application for dispute resolution via registered mail on December 5, 2019. The tenant testified that he received the landlords' application around that time but could not recall on what date. I find that the landlords' application for dispute resolution was served on the tenant in accordance with section 89 of the *Act*.

### Issues to be Decided

1. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Are the landlords entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Are the landlords entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2017 and ended on November 21, 2019. At the beginning of the tenancy the monthly rent was \$2,200.00, payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agreed to the following facts. The landlords served the tenant with a Notice of Rent increase on July 1, 2019; however, they noticed a mistake and served the tenant with the corrected Notice of Rent Increase on July 4, 2019. The Notice of Rent Increase, dated June 5, 2019, was entered into evidence and states that the tenant's rent will increase by \$55.00 effective October 1, 2019 for a total rent of \$2,255.00.

Landlord A.W. testified that they sold the subject rental property and the new owners took possession on December 13, 2019.

Both parties agree that the tenant texted the landlords on November 4, 2019 to inform them that he was moving out of the subject rental property by November 16, 2019. Both parties agree that on November 19, 2019 the tenant and landlord C.L. signed the following agreement:

I, [tenant], hereby acknowledge that the [landlords] have paid the damage deposit back to me in full (\$1,100.00) by e-transfer and the tenancy is hereby terminated at [subject rental address] at 6:00 p.m. on November 21, 2019 by way of mutual agreement.

[Tenant] will not enter the subject rental property after today's date, and agrees to surrender all keys to the house.

Landlord A.W. testified that they only signed the above agreement with the tenant because the tenant was threatening to not move out and disrupt the sale of the subject rental property. The tenant denied the above testimony.

Both parties agree that a move in condition inspection report was completed by the parties on July 15, 2017 and a move in condition inspection report was completed by the parties on November 21, 2019. The move out condition inspection reports uploaded into evidence by the parties are different. The landlords' version states at section Z the following damage to the rental unit for which the tenant is responsible: cat door, carpets not cleaned, no vacuuming done, cabinets not wiped inside, walls not washed. The tenant's version states at section Z the following damage to the rental unit for which the tenant is responsible: cat door.

Both parties agree that the landlords added "carpets not cleaned, no vacuuming done, cabinets not wiped inside, walls not washed" after the tenant and landlord C.L. signed the move out condition inspection report. Landlord A.W. testified that landlord C.L. felt pressured by the tenant, when completing in the move out condition inspection report, to state that the subject rental property was clean and that there were no issues, when in fact, there were issues and the subject rental property was not clean.

Landlord A.W. testified that the following damages arose out of this tenancy:

<b>Item</b>	<b>Amount</b>
Garbage removal	\$47.51
Carpet cleaning	\$275.94
Repair cat door damage	\$80.74
Cleaning	\$120.00
October 2019 rent increase	\$55.00
Unpaid rent- November and December 2019	\$4,510.00
<b>Amount</b>	<b>\$5,089.19</b>

### Garbage removal

Landlord A.W. testified that the tenant left a large amount of garbage at the subject rental property and that it cost \$47.51 to take it to the dump. A receipt for same was entered into evidence. The tenant did not dispute the above. The tenant testified that, as per the November 21, 2019 mutual agreement to end tenancy, he was not supposed to return to the subject rental property, so he could not clean up his garbage.

Both parties agree that the landlord returned two garbage cans (owned by the tenant) full of garbage, to the tenant's new address. The tenant testified that given how much

garbage was returned to him, he did not believe there was \$47.51 worth of garbage taken to the dump.

The tenant's version of the move out condition inspection report does not mention garbage.

#### Carpet cleaning

Landlord A.W. testified that the tenant did not vacuum the carpets or have them cleaned at the end of the tenancy and that they were dirty. The landlords entered into evidence a photograph of carpet on the stairs and in the master bedroom. The carpets in the photographs look stained. Landlord A.W. testified that she received a quote in the amount of \$275.94 for having the carpets professionally cleaned and that she provided the new owners with \$275.94 so that they could have the carpets cleaned.

The tenant testified that he vacuumed and shampooed the carpets at the end of the tenancy. The tenant testified that he did not believe the landlord that she gave \$275.94 to the new owners to have the carpets cleaned. I asked the landlord if she had any proof of the transfer of funds. Landlord A.M. testified that she did not actually give \$275.94 to the new owners but that the price the new owners paid for the subject rental property was lower than it otherwise would have been, had the carpets been cleaned. No documentation supporting the above testimony was entered into evidence.

The move out condition report states that the carpets are in good condition in every room.

#### Repair cat door damage

Both parties agree that the tenant installed a cat door in a door without permission. The landlords entered into evidence a quote for a new door in the amount of \$80.74. Landlord A.W. testified that she paid the new owner \$80.74 for a new door, later in her testimony Landlord A.W. testified that she did not pay the new owner \$80.74 but that the purchase price of the subject rental property was lower than it otherwise would have been given the condition of the door. No documentation to support a reduced purchase price, due to the condition of the subject rental property, was entered into evidence.

The move out condition inspection report notes the damage to the door.

### Cleaning

Landlord A.W. testified that the subject rental property was dirty when the tenant moved out. The landlords entered into evidence a photograph of dirty drawer and a dirty cupboard. Landlord A.W. testified that the stairwells were dirty, the inside of the cabinets showed evidence of food and liquids, and the floors required vacuuming. Landlord A.W. testified that she and her grandmother cleaned the subject rental property for four hours and is seeking \$30.00 per hour for four hours for a total of \$120.00.

The tenant testified that four hours of cleaning is not a lot and that is a reasonable amount of cleaning to be left after he moved out. The tenant testified that the landlord did not enter into evidence many photographs of the dirt and that it was reasonable to leave a few dirty drawers and cupboards.

The move out condition inspection report states that the subject rental property was clean on move out.

### Unpaid Rent

Both parties agree that the tenant did not pay the \$55.00 rent increase for October 1, 2019. The tenant testified that he forgot about the rent increase.

Both parties agree that the tenant did not pay any rent for November or December 2019. Landlord A.M. testified that she is seeking November and December's rent totalling \$4,510.00 from the tenant.

Both parties agree that the tenant helped the landlords frame a garage and in return, the tenant did not have to pay a pet damage deposit, even though he had pet(s). The tenant testified that he and the landlords signed a mutual agreement to end tenancy so his rental obligations stopped on November 21, 2019 and he does not owe rent for the remainder of November or December 2019. The tenant testified that he used his pet damage deposit in lieu of November's rent.

### Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], 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.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Section 21 of the Residential Tenancy Act Regulation states:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I find that the landlords have not proved, on a balance of probabilities, that landlord C.L. signed the condition inspection report under duress. Pursuant to section 21 of the Regulations, unless there is a preponderance of evidence to the contrary, I accept the tenant's version of the move out condition report as evidence of the state of repair and condition of the rental unit. I will not consider the landlord's version of the move out

condition inspection report because it was improperly altered after it was signed by the parties.

### Garbage removal

While the move out condition inspection report does not state that the tenant left garbage at the subject rental property, I find that there is a preponderance of evidence to the contrary. Both parties agreed that the tenant left a large amount of garbage.

Section 37(2)(a) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find that in leaving garbage at the subject rental property, the tenant breached section 37(2)(a) of the *Act*. I find that the signing of the mutual agreement to end tenancy did not relieve the tenant of this obligation. I find that the landlords suffered a loss in the amount of \$47.51 from the tenant's breach of section 37(2) of the *Act*, as evidenced by the receipt entered into evidence. I accept landlord C.L.'s testimony that the garbage left at the subject rental cost \$47.51 to dump.

### Carpet cleaning/ cat door damage

I find that the landlords have not proved, on a balance of probabilities, that the sale price of the subject rental property was lower than it otherwise would have been had the carpets been cleaned and the cat door not been installed. No documents to support the above claims were entered into evidence. I therefore dismiss the above claims.

### House cleaning

Section 37(2)(a) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Landlord A.W. testified that the subject rental property required cleaning and that she and her grandmother cleaned for four hours. The tenant testified that four hours of cleaning at the end of a tenancy was reasonable for the landlords to conduct. The

tenant did not dispute the need for further cleaning. I find the testimony of the parties constitutes a preponderance of evidence and that the tenant breached section 37(2)(a) of the *Act* by failing to leave the rental unit reasonably clean. I accept landlord A.W.'s testimony that she and her grandmother cleaned for 4 hours. I find the landlords' claim for \$30.00 per hour spent cleaning to be reasonable. I therefore find the landlords are entitled to \$120.00 for cleaning fees from the tenant.

### Rental increase

Section 42(2) of the *Act* states that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

Section 53(2) of the *Act* states that 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.

Both parties agree that the landlord served the tenant with the Notice of Rent Increase on July 4, 2019. I find that the earliest effective date that complies with section 42(2) of the *Act* is November 1, 2019. Pursuant to section 53(2), I deem the Notice of Rent Increase effective November 1, 2019. I therefor dismiss the landlord's' claim for the \$55.00 rent increase for October 1, 2019.

### November and December 2019 rent

Section 44 of the *Act* sets out the ways in which a tenancy may end. Section 44(1)(a)(i) states that the tenancy will end if the tenant or landlord gives notice to end the tenancy in accordance with section 45 [*tenant's notice*].

Section 45(1) of the *Act* states that 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 44(1)(c) states that a tenancy ends if the landlord and tenant agree in writing to end the tenancy.

I find that the landlords have not proved, on a balance of probabilities, that the tenant forced landlord C.L. to sign the Mutual Agreement to End Tenancy or threatened to disrupt the sale of the subject rental property.

I find that the tenant gave notice to end tenancy via text on November 4, 2019 and that the parties entered into a Mutual Agreement to End Tenancy on November 21, 2019. I find that the November 21, 2019 Mutual Agreement to End Tenancy supersedes the November 4<sup>th</sup> notice to end tenancy as it was entered into most recently. I find that the landlords are not entitled to the notice timelines set out in section 45(1) of the *Act*, because they chose to enter into the Mutual Agreement on November 21, 2019. Pursuant to the Mutual Agreement to End Tenancy, I find that the landlords are not entitled to rent after November 21, 2019.

I find that the pet damage deposit agreement does not entitle the tenant to use the amount he saved by completing framing work at the beginning of the tenancy, as a deduction at the end of the tenancy. A pet damage deposit was not paid so there is nothing for the landlord to deduct November's rent from. I find that pursuant to section 26 of the *Act*, the tenant was required to pay rent on November 1, 2019 which he did not do. I find that the tenant is required to pay a pro-rated rent from November 1-21, 2019 pursuant to the following calculation:

$$\begin{aligned} &\$2,255.00 \text{ (rent)} \div 30 \text{ (days in November)} = \$75.17 \text{ (daily rate)} \times 21 \text{ (rental days} \\ &\text{in November)} = \mathbf{\$1,578.57} \end{aligned}$$

As the landlords were successful in their application for dispute resolution, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

### Conclusion

I issue a Monetary Order to the landlords under the following terms:

Item	Amount
Garbage removal	\$47.51

Cleaning	\$120.00
November rent	\$1,578.57
Filing fee	\$100.00
<b>Amount</b>	<b>\$1,846.08</b>

The landlords are provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this 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: May 04, 2020

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Residential Tenancy Branch