



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY  
MANAGEMENT and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** MNDCL-S, FFL, MNDL-S

### **Introduction**

This hearing dealt with the landlord's 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; and
- authorization to recover the filing fee for this application, pursuant to section 72

CL appeared for the landlord in this hearing. MD testified on behalf of both tenants in this hearing. SD confirmed his presence at the hearing at 1:44 p.m. Both parties 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.

The tenants confirmed receipt of the landlord's dispute resolution application ('Application') and evidence package. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with the application and evidence. The tenants did not submit any written evidence for this hearing.

### **Issue(s) to be Decided**

Is the landlord entitled to a Monetary Order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to recover the cost of the filing fee for this application?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or

arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy began in 2015, although the tenants signed a new month-to-month tenancy agreement with the landlord on July 31, 2018. Monthly rent was set at \$854.000, payable on the first day of each month. The landlord had collected, and still holds, the tenants' security deposit of \$350.00.

On November 21, 2019 a hearing was held, and both parties had confirmed a mutual agreement that the tenancy would end on November 30, 2019 by 1:00 p.m. The landlord was provided an Order of Possession in case the tenants did not give peaceful and vacant possession to the landlord by that date. The landlord provided a copy of the decision and Order in their evidentiary materials.

The landlord is seeking the monetary orders set out in the table below:

<b>Item</b>	<b>Amount</b>
Overholding for December 1-5, 2019 (\$854.00 * 12 months/365 days * 5 days)	\$140.40
Unpaid NSF/Late Fees	50.00
Damage to Walls	159.60
<b>Total Monetary Order Requested</b>	<b>\$350.00</b>

The landlord testified that the tenants failed to give vacant possession until December 5, 2019, and are seeking compensation for overholding. The landlord is also seeking a monetary order for unpaid NSF and late fees, as well as compensation for damage left by the tenants when vacating the rental unit. The landlord submitted a move-out inspection report dated December 5, 2019, a ledger, as well photographs to support their claim. The move-out inspection report notes drawings on the wall, which are depicted in the photos submitted by the landlord.

The tenants dispute that they left the rental unit in damaged condition. At the beginning of the hearing, the tenants confirmed that they were unable to give vacant possession until December 5, 2019, and requested an extension from the landlord to remove all their personal belongings from the property. The tenants also confirmed that they did not pay any rent for December 2019. During the hearing, the tenants testified that they did in fact move out by November 30, 2019, and that they have documents to support that they have moved into a new place, which were not submitted into evidence.

## **Analysis**

I find that both parties had mutually agreed that the tenancy was to end by 1:00 p.m. on November 30, 2019, by which date and time the tenants were to give peaceful and vacant possession to the landlord. I find that although the tenants acknowledged at the beginning of the hearing that they gave possession back to the landlord on December 5, 2019, the tenants providing conflicting testimony later in the hearing that they had in fact moved out by November 30, 2019. The tenants testified that they had documentary evidence to support that they had moved out, which was not provided for this hearing.

I do not find the tenants' submissions to be convincing or persuasive. I find the tenants' testimony to be inconsistent and changed within the 17 minute hearing, and although the tenants testified to having documentary evidence to support their claims, they did not provide this for the hearing. I find the move-out inspection was dated December 5, 2019, and signed by both parties. I find that the move-out inspection report notes that the tenants had left their belongings behind in the driveway, which is consistent with the tenants' own testimony at the beginning of the hearing about their request for more time to finish moving. I find that the tenants failed to provide vacant possession to the landlord until December 5, 2019 despite the fact that a mutual agreement was made for 1:00 p.m. on November 30, 2019. I find it undisputed that the tenants did not provide any compensation for the period of December 1 through to 5, 2019. I find that the tenants were not in possession of an Order or written permission allowing them an extension to vacate the property on December 5, 2019. On this basis, I allow the landlord's monetary claim of \$140.40 for overholding for the period of December 1 to 5 2019.

I find the landlord provided documentation to support that the tenants owe \$50.00 in late and NSF fees. Accordingly, I allow the landlord's monetary claim in the amount of \$50.00.

Section 37(2)(a) of the *Act* stipulates 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 the landlord supported their claim for damage to the walls with photos and a move-out inspection report that supports the fact that the tenants had failed to leave the home in reasonably undamaged condition. I do not find the drawings on the wall to constitute wear and tear, and I find the landlord's monetary claim to be reasonable. For this reason, I allow the landlord's monetary claim for damage to the walls.

I find the landlord is entitled to recover the cost of the filing fee for this application.

The landlord continues to hold the tenants' security deposit of \$350.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

### **Conclusion**

I issue a Monetary Order in the amount of \$100.00 in the landlord's favour under the following terms which allows for the monetary award for damage caused by the tenants, money owed by the tenants, as well as compensation for overholding. I allow the landlord to retain the \$350.00 security deposit in partial satisfaction of their monetary claim. The landlord is also authorized to recover \$100.00 for the filing fee.

<b>Item</b>	<b>Amount</b>
Overholding for December 1-5, 2019 (\$854.00 * 12 months/365 days * 5 days)	\$140.40
Unpaid NSF/Late Fees	50.00
Damage to Walls	159.60
Filing Fee	100.00
Less Security Deposit Held	-350.00
<b>Total Monetary Order</b>	<b>\$100.00</b>

The landlord is provided with this Order in the above terms and the tenants must be served with a copy of this Order as soon as possible. Should the tenants 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 25, 2020

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Residential Tenancy Branch