



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, MNDL-S, MNDCL-S, FFL

### Introduction

The landlords filed an application for dispute resolution (the “Application”) on May 12, 2020 seeking an order for compensation for damage caused by the tenants, and compensation for monetary loss or other money owed. The landlords apply to use the security deposit towards compensation on these two claims. Additionally, the landlords seek to recover the filing fee for the Application.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on June 12, 2020. Both parties attended the conference call hearing, with their agents. The tenant and the landlords both attended the hearing, and I provided each with the opportunity to present oral testimony. In the hearing, both parties confirmed they received the evidence prepared by the other. The tenants stated they received evidence within a narrow timeframe prior to the date of this hearing.

### Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage or compensation pursuant to section 67 of the *Act*?

Are the landlords entitled to retain the security deposit pursuant to section 38 of the *Act*?

Are the landlords entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

### Preliminary Matters

The tenants, through their agent, stated that they received evidence for this hearing very recently. This was “1 or 2 days ago”, prior to the hearing. Given the nature of the submissions, and the ability of the tenants to speak to what the submissions represent, I find the tenants are not prejudiced by its inclusion in this review. This is based on the applicability of the *Act*, and consideration of principles of administrative fairness.

One agent for the landlord did not attend the hearing; however, this individual’s name is listed as one of the applicants in this matter. This individual did not sign the tenancy agreement that was provided by the landlords in this matter. I so amend the landlords’ Application to exclude this individual, who is not a party to the action and did not attend the hearing.

The landlords applied for an order of possession of the rental unit. This is subsequent to the ‘Two Month Notice to End Tenancy for Landlord’s Use of Property.’ issued to the tenants on February 1, 2020. They referred to the separate hearing in this matter in which the tenants dispute the issuance of this notice. That hearing took place on May 25, 2020, and I provide my decision in that matter separately. The decision rests on the validity of the document itself and if it should be cancelled by an application of the *Act* and consideration of both parties’ submissions in that hearing.

Given the separate decision, I here dismiss the landlords’ application for an order of possession.

The landlords’ make a claim for compensation for damage to the rental unit. They provided the amount of \$450.00 with their Application; this is the amount of the security deposit paid by the tenants on January 1, 2020. The landlords state: “Amount of the actual damages will be calculated once the landlord is able to get the damages fixed, depending on the nature of the damages.”

In the hearing, the agent for the landlords presented a specific list of items they state need repair. They presented photos from a recent visit to the rental unit and referred to evidence provided by the tenants in their application which is the subject the other hearing. They reiterated that they did not know the dollar amount for compensation, and “cannot get estimates until the tenants move” and “Receipts will be provided.”

They presented a receipt for extermination for which they claim they need reimbursement. The landlords did not speak to this in the hearing and did not provide a separate accounting for this amount. The Application states: “[landlords] had the full house and yard exterminated when he moved into the [property] year 2017”. There is no evidence to tie this to this tenancy at issue here. Therefore, I dismiss this portion of the landlords’ claim.

In summary, the landlords have not yet undertaken to assess what they ask for in terms of damage to the rental unit. For this reason, I dismiss this part of their Application with leave to reapply.

The landlords also apply for compensation for loss or other money owed. This component of their Application is for compensation to their agents in this matter. The agents, in a submission dated June 11, 2020, state: “The Advocates are requesting for compensation for their lost time/money.”

The agents also provided a separate invoice, giving details of work, an approximation for hours of work, and an equivalent “business hourly rate”. Primarily this is for time away from their own business to provide service to the landlords in this matter. They provide a total for each of the two agents actively working on this matter on behalf of the landlords. For one agent this is \$9,800.00; for the second it is \$1,700.00.

The *Act* does not provide for recovery of other costs associated with preparing for a hearing. Therefore, the cost of agents is not recoverable. Moreover, I find in their submission the agents are making a claim for their own time. This is not presented as expenses borne by the landlords in the context of the tenancy agreement or ending the tenancy. I find there is no evidence to show that the landlords paid for any expenses stemming from their working with agents for this hearing.

For this reason, I dismiss this portion of the landlords’ claim, without leave to reapply.

The *Act* section 72 grants me the authority to order the repayment of a fee for the Application. As the landlords were not successful in their claim I find they are not entitled to recover the filing fee from the landlord.

Conclusion

For the reasons above, I dismiss the landlords' Application for compensation and for an order of possession of the rental unit. The landlords have leave to apply by separate application on the issue of damages to the rental unit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 15, 2020

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Residential Tenancy Branch