



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

**FFL, MNDL-S**

### Introduction

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

- a monetary award for money owed or compensation for loss under the *Act* pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the landlord pursuant to section 72 of the *Act*.

Only the applicant landlord attended the hearing. The landlord was provided a full opportunity to present submissions, undisputed sworn testimony and evidence. The landlord explained that he served the tenant M.B. in person on May 26, 2020 and tenant D.M. in person on June 1, 2020 with both his application for dispute resolution and his evidentiary package. I find pursuant to sections 88 & 89 that the tenants were both respectively served the application for dispute and evidentiary packages on May 26, 2020 and June 1, 2020.

I note the landlord applied to amend his application for dispute resolution on May 22, 2020 to reflect a request for a monetary award of \$20,573.00. Furthermore, during the hearing, the landlord said he wished to include tenant M.B. on the application. Pursuant to section 64(3)(c) of the *Act* I allow both amendments as requested. I find the landlord provided sufficient documentation demonstrating the named tenants were aware of the amendment and I accept the landlord's undisputed testimony that he served tenant M.B. with the hearing notice and his evidentiary package on May 26, 2020. I accept the landlord's undisputed testimony that tenant M.B. was in occupation of the rental unit until June 3, 2020 and therefore find the amendment to include M.B. on the application to be appropriate.

It should be noted that the landlord had previously amended his application to include tenants M.B. and J.B. on January 27, 2020 on his application for dispute. In this amendment, the landlord sought a monetary award of \$3,370.00. The landlord acknowledge that he did not serve this application or evidence on the tenant J.B. and

did not wish to amend his application to include this person, therefore tenant J.B. is not included in this dispute.

Issue(s) to be Decided

Is the landlord entitled to a monetary award? Can the landlord recover the filing fee?

Preliminary Issue – Amount Requested in Monetary Order Worksheet

Following testimony from the landlord during the hearing it became apparent that some of the figures cited in the landlord's monetary order worksheet were incorrect.

Specifically, the amounts sought for unpaid rent, the amount quoted for bailiff services, and a request to be paid the damage deposit. The landlord's monetary order worksheet reflected the following claims:

ITEM	AMOUNT
Clean up/Dump	\$2,000.00
Unpaid Rent	5,213.00
Bailiff cost	4,000.00
Damage Deposit	1,600.00
Court costs	460.00
Replacement of furnace	3,000.00
Replacement of window	600.00
Replacement of hot water heater	1,200.00
Structural damage repairs	2,500.00
<b>TOTAL =</b>	<b>\$20,573.00</b>

The landlord sought to amend his monetary order worksheet to reflect partial rent paid of \$500.00 for January 2020 and to include unpaid rent for the subsequent months the tenants were in occupation of the rental unit. Specifically, the landlord sought unpaid rent for February through June 2020. Additionally, the landlord said the figure quoted to him by the bailiff was incorrect and the true amount was \$1,248.75 rather than the \$4,000.00 cited in his monetary order worksheet. The landlord also clarified that he had incorrectly sought payment of the “damage deposit” and wished to remove this from his application.

After reviewing the amount sought in the application in light of the amendments requested by the landlord, I find that the substance of the claim to be sufficiently unchanged. For these reasons, I allow the landlord to amend his application for a monetary award as described below, pursuant to section 64(3)(c).

#### Background and Evidence

The landlord explained the tenancy began in October 2018 and ended on June 3, 2020 after the parties were forcibly removed by a bailiff following the issuance of an Order of Possession on April 7, 2020 at an urgent end of tenancy application before the Residential Tenancy Branch. Rent for the unit was \$1,900.00 per month, inclusive of utilities and no pet or security deposit were collected.

As noted above, the landlord originally sought a monetary award of \$20,573 from the tenants. At the outset of the hearing the landlord clarified and amended his application as follows:

ITEM	AMOUNT
Clean up/Dump	\$2,000.00
<del>Unpaid Rent for February through June 2020 (5 x \$1,900.00)</del>	<del>5,213.00</del>
Unpaid Rent for January 2020	1,400.00
Unpaid Rent for February through June 2020 (5 x \$1,900.00)	9,500.00
Bailiff cost	4,000.00 1,248.75
Damage Deposit	-1,600.00
Court costs	460.00
Replacement of furnace	3,000.00
Replacement of window	600.00
Replacement of hot water heater	1,200.00
Structural damage repairs	2,500.00
<b>TOTAL =</b>	<b>\$21,908.75</b>

The landlord testified that he sought a monetary award to fix the damage done to the rental unit by the tenants and for the costs associated with removing the tenants through a bailiff service. The landlord included many dozens of photos in support of his application to evidence the amount of damage done to the property. These pictures included a huge amount of debris and garbage present in the unit along with significant physical damage to the entire premises. Amongst the items shown in the landlord's photos were large marijuana plants growing in the rental unit, a discarded ATV in the backyard and immense quantities of construction debris strewn throughout the property (inside and out). The property pictured was nearly unrecognizable as a home and would be considered uninhabitable by the reasonable person. In addition to the debris described above, the landlord included photos of the damaged furnace and hot water heater, along with a photo of the broken window.

The tenants did not attend the hearing and no evidence or submissions were provided by them.

### 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 his claim for a monetary award.

At the hearing, the landlord explained that he had incurred loss as a result of the significant damage done to his rental property, along with the costs associated with removing the parties from the property and for unpaid rent. The landlord provided only photographs showing the damage along with sworn, undisputed testimony in support of these costs

*Residential Tenancy Policy Guideline #16* 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." This *Guideline* continues by explaining, "the party who suffered the damage or loss can prove the amount of or value of the

damage or loss.” While I find that the landlord has failed to provide invoices or estimates in support of his application, I found his testimony to be accurate and detailed. I found the landlord to be a reliable and credible witness and I accept the amounts provided by him in his monetary order worksheet and through his testimony. Furthermore, I find the photographs submitted in evidence to accurately show the extent of the damage caused by the occupants and I do not dispute that a significant number of repairs and restoration are required on the property following the tenants’ eviction from the unit.

I award the landlord a monetary award of \$21,908.75 as described on the table contained on page 3 of this decision. As the landlord was successful, the landlord may recover the \$100.00 filing fee which is included in his table as “court costs”.

### Conclusion

I issue a Monetary Order of \$21,908.75 to the landlord.

The landlord is provided with a Monetary Order in the above terms and the tenants must be served with 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: June 16, 2020

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Residential Tenancy Branch