



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      PSF, OLC, FFT, MNDCT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on January 29, 2020 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to provide services or facilities required by tenancy agreement or law;
- an order that the Landlord comply with the Act, tenancy agreement, or regulations;
- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Tenants, the Landlord and the Landlord's witness A.G. attended the hearing and the appointed date and time. At the start of the hearing, the Landlord indicated that she had a Doctor's note stating that she has health issues and that a previous hearing held on June 8, 2020 should be adjourned for 3 weeks. The Landlord stated that since seeing the Doctor, she is now on new medication and feels better. The Landlord stated that her memory was a little vague, however, she was willing and able to proceed with the hearing.

The Tenants testified that they served the Landlord with their Application package and documentary evidence on January 31, 2020 by Registered Mail. The Landlord stated that she could not recall if she received the Tenants' package in the mail. The Tenants provided a copy of the registered mail receipt in support. Based on the oral and written submissions of the Applicants, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the Application and documentary evidence on February 5, 2020, the fifth day after their registered mailing. I further note that the Landlord was able to provide documentary evidence to the Tenancy Branch and was able to attend the hearing, confirming that she had some prior knowledge of the Tenants' Application.

In return, the Landlord testified that he served her documentary evidence to the Tenants on June 16, 2020. The Tenant confirmed receipt. Therefore, pursuant to

Sections 71 of the Act, I find the Landlord's documentary evidence was sufficiently served to the Tenants for the purposes of the *Act*.

The Parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

1. Are the Tenants entitled to an order to provide services or facilities required by tenancy agreement or law, pursuant to Section 62 of the *Act*?
2. Are the Tenants entitled to an order that the Landlord comply with the Act, tenancy agreement, or regulations, pursuant to Section 62 of the *Act*?
3. Are the Tenants entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
4. Are the Tenants entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

#### Background and Evidence

The parties testified and agreed to the following; the tenancy began on August 1, 2019. Rent in the amount of \$1,450.00 is due to the Landlord by the first day of each month, as well as a security deposit in the amount of \$750.00 was paid to the Landlord.

The Tenants testified that they experienced a snow storm sometime in January 2020. The Tenants acknowledged that it is their responsibility to remove the snow on their rental property. The Tenants stated that a portion of the driveway used to exit the rental property joins with the Landlord's property, therefore, they were unsure as to who's responsibility it was to clear the remaining portion of the driveway which was shared between the Tenants and the Landlord.

The Tenants stated that they had to hire a plow to clear the driveway at a cost of \$200.00. Furthermore, the Tenants stated that they were unable to attend work for one week as a result of being snowed in. As such, the Tenants are claiming \$1,240.00 in lost wages.

The Landlord responded by stating that it is the Tenants' responsibility to remove the snow from the driveway. The Landlord stated that she had previously suggested to the Tenants that they should park at the top of the driveway if it was going to snow, as the snow drifts make it difficult to clear the driveway as the wind pushes the snow back onto the driveway a short while after clearing it away. The Landlord stated that the Tenants did not follow her suggestion to park at the top of the driveway, resulting in them being snowed in. The Landlord stated that the Tenants had alternative modes of

transportation such as making use of the transit bus system which is available to the Tenants. The Landlord feels as though she should not be responsible for compensating the Tenants.

The Tenants stated that during the winter months, they experienced issues with two of the five baseboard heaters in the rental unit. The Tenants stated that there is a wood burning stove which they used, however, it was not their preferred source of heat. The Landlord stated that the wood burning stove is the main source of heat in the home and that it is more than adequate to heat the rental unit. The Landlord stated that the Tenants restricted her access to repair the baseboard heaters.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

With respect to the Tenants Application for an order to provide services or facilities required by a tenancy agreement or law, I find that the Tenants have provided insufficient evidence to demonstrate that the Landlord was responsible for providing snow removal service for a portion of the driveway used by the Tenants. I find that the Tenants have also provided insufficient evidence to demonstrate that the Landlord is not providing the Tenants an adequate heat source in the rental unit. As such, I dismiss this portion of the Tenants' claim without leave to reapply.

In relation to the monetary compensation sought by the Tenants, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally, it

must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Tenant's claim seeking compensation for \$200.00 relating to the cost of the snow removal, I find that that the parties agreed that the Tenants were responsible for the snow removal, therefore, I find that it is reasonable that they pay the cost of removing the snow.

The Tenants are also claiming loss of wages during the week that they were snowed in. In this case, I find that the Tenants provided insufficient evidence to demonstrate that the Landlord breached the Act, tenancy agreement, or regulations. I find that the Tenants could have mitigated their loss by parking near the road if there was a chance of snow fall. Furthermore, if the Tenants were unable to drive, I find that they could made use of alternative modes of transportation.

In light of the above, I dismiss the Tenants monetary claims without leave to reapply. As the Tenants were unsuccessful with their Application, I find that they are not entitled to recovering the filing fee.

### Conclusion

I dismiss the Tenants' Application in its entirety without leave to reapply.

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 19, 2020

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Residential Tenancy Branch