



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL, MNRL, MNDCL, FFL

### Introduction

The landlords filed an application for Dispute Resolution (the “Application”) on April 7, 2020 seeking an order to recover monetary loss for unpaid rent, damages, and compensation for other money owed by the tenant. Additionally, they applied for the cost of the hearing filing fee.

The matter proceeded by way of a hearing on August 11, 2020 pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlords attended the hearing; the tenant did not attend. The tenant did not submit or serve documents as evidence for this hearing.

In the hearing, the landlords confirmed they delivered notice of this hearing to the tenant on April 7, 2020. They stated the tracking number entry for Canada Post showed the registered mail was delivered to the tenant on April 9, 2020. They stated the evidence they prepared for this hearing was included in that same package.

In consideration of the evidence presented by the landlords, and with consideration to section 89 of the *Act*, I find the tenant was sufficiently served with notice of this hearing, as well as the landlords’ evidence.

### Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent pursuant to section 67 of the *Act*?

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

Are the landlords entitled to a monetary order for compensation for other money owed pursuant to section 67 of the *Act*?

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

### Background and Evidence

The landlords submitted a copy of the tenancy agreement for this hearing and spoke to its terms. Both the landlord and tenant signed this agreement on July 22, 2019. The tenancy started on July 23, 2019 for a fixed term ending on July 31, 2020. The monthly rent was \$3,200.00 per month. The tenant paid a security and pet damage deposit of \$1,600.00 each on July 23, 2019. The cost of electricity service is not included in the monthly rent.

The landlords ended the tenancy by serving a '10 Day Notice to End Tenancy for Unpaid Rent or Utilities' to the tenant on March 8, 2020. A copy of this document provided by the landlord was accompanied in the evidence by a 'Proof of Service' that provides the document was left in the mailbox at the rental unit. The document specified that the end of tenancy was set at March 23, 2020.

The reason for the landlord ending the tenancy was the tenant's failure to pay the full amount of rent on March 1, 2020. In the hearing, the landlords stated that there was a pattern of late rent payments. When asked especially about the March rent, the tenant stated to them that they would be moving out. After this, a number of the tenant's possessions remained in the unit, and the tenant had the door lock on the rental unit changed. Neighbours told the landlords that the tenant would arrive to the unit periodically to leave unwanted items. Eventually, the tenant moved, and in the interim prior to this hearing the landlords obtained an order of possession for the rental unit.

The landlords prepared a 'Monetary Order Worksheet' and signed that document on April 6, 2020. The initial amount of their total claim was \$24,648.00. In the hearing they explained this was based on estimates for work not yet completed at the time they applied and prepared that monetary breakdown list. At the hearing, the stated their amended amount of claim totals \$17,692.53.

The landlords initially claimed for the unpaid rent for March and April 2020, at \$3,200 each for the total of \$6,400.00. In their initial application the landlords stated: "The landlord will seek further rent loss beyond April 2020." In the hearing, the landlords stated they are amending the monetary amount claimed for rent for the month of May, adding another \$3,200.00 for a total of \$9,600.00.

The landlords also stated they had to accept the following months' rent at \$3,000.00; this is a reduction in the tenancy agreement amount agreed to by the tenant by \$200.00. They claimed this \$200.00 for each of the months of June and July, as recompense for loss of rent income owed in those subsequent months.

Additionally, the landlords made a monetary claim as follows:

| item | for                                | amount            |
|------|------------------------------------|-------------------|
| 1.   | unpaid electricity bill            | \$898.17          |
| 2.   | junk removal                       | \$450.00          |
| 3.   | contractor repair invoice          | \$4,693.50        |
| 4.   | rat/pest control                   | \$892.50          |
| 5.   | fireplace repair                   | \$150.00          |
| 6.   | lawn repair                        | \$70.87           |
| 7.   | replace wardrobe                   | \$300.00          |
| 8.   | additional arbitration filing fees | \$200.00          |
| 9.   | registered mail – total            | \$37.49           |
|      | <b>TOTAL AMOUNT</b>                | <b>\$7,692.53</b> |

Including rent recovery, the total amount of the landlord's claim, as amended in the hearing, is \$17,692.53. In the hearing, the landlords provided the above list and added up these amounts to substantiate the total amount claimed.

The landlords provided copies or photos of receipts for Items 1 through 5 above. A receipt from Home Depot is labelled 'Invoice-Grass-Seeds-Garden\_Hose' showing highlights on a list. A photo named 'Damaged\_Wardrobe' is in the evidence. Additionally, there are three registered mail receipts totalling \$37.49 for item 9.

For item 3. listed above, the tenants provided a receipt from a contractor dated June 2, 2020. It shows an itemized list of nine separate services or repairs. Photos supplied by the landlords show damages that are listed in that invoice. An account from the contractor states that he assisted the landlords to complete new work to the unit prior to the tenant moving in. The contractor also sets out what they witnessed upon meeting with the landlord after the tenant had left – this includes an abandoned animal, and a lot of garbage in the unit and the yard.

Additionally, to contrast the unit prior to the tenant's move in, and after the move out, the landlord provided photos of certain areas of the unit. These are dated July 2019.

The landlords also provided a copy of the Condition Inspection Report. This shows the possession date of July 22, 2019 and the move-out inspection date of April 4, 2020. This

document shows the landlord signing for move-in and move-out; however, the tenant signed only for move-in.

The landlords also provided that they gave the tenant the opportunity to attend a move-out inspection report. They gave evidence of this in the form of a Notice to the tenant dated March 5, 2020 proposing March 7 as a meeting date and a final opportunity Notice proposing March 15, 2020 as a meeting date. A witness statement gives an account of an individual who observed the landlords give these documents to the tenant by leaving them in the mail box of the rental unit.

The tenant did not attend the hearing and did not provide documentary evidence prior to the hearing date.

### Analysis

I allow the landlord's amendment to the monetary amount claimed. I find this is reasonable in the circumstances where a subsequent month's rent was not paid. I accept the landlords' amendments to their claimed amounts and thus proceed on this analysis.

From the testimony of the landlords I am satisfied that a tenancy agreement was in place. The landlords provided the specific term of the rental amount. The tenant did not attend the hearing; therefore, there is no evidence before me to show otherwise.

I accept the evidence before me that the tenant failed to pay the rent for March 2020. This extends into April 2020 – with the tenant still present in the unit -- for the total of \$6,400.00.

The evidence shows the tenant breached the terms of a fixed-term tenancy agreement which was set to end on July 31, 2020. For the final two months of the fixed term, the landlords re-rented the unit. I find the month of May falls within the fixed term of the tenancy agreement, and find the landlords are entitled to recovery of the rent for May. This is \$3,200.00. This loss would not have occurred but for the tenant's breach of the tenancy agreement. Additionally, the damages requiring a reworking of the unit by the landlords left them unable to rent the unit for that month. This is in line with the principle of awards "sufficient to put the landlord in the same position as if the tenant had not breached the agreement."

The landlords claimed the amount of \$400.00 for loss of full rental income in the subsequent months of June and July. I find the landlord is eligible for compensation for the difference between what they would have received from the tenant in the normal course of the fixed tenancy, and the amount at which they were able to re-rent the unit. This is sufficient to put the landlord in the same position as if the tenant had not breached the agreement. I order the

amount of \$400.00 awarded to the landlords. This amount is with due regard to the landlords' ability to minimize their loss by repairing the unit in a timely manner, and re-renting the unit shortly thereafter.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The *Act* section 37(2)(a) provides that when vacating a unit, the tenant must "leave the rental unit reasonably clean." Also, the tenant must give the keys to the landlords and allow access to the rental unit.

The landlords provided an itemized list of costs incurred. I have subdivided issues on costs provided by the landlords. Some costs are verified and ascertainable through a review of the evidence provided by the landlords; however, others are not. In this manner I shall decide on amounts based on an analysis with consideration to the *Act* and related policy guidelines.

The following table is an award for damages. I find these costs incurred by the landlord are established in the evidence they present, with regard to either their testimony in the hearing, evidence provided by the hired contractor at the end of the tenancy, or photos. Additionally, there is reference to specific items in the Condition Inspection Report that they provided.

| item                    | amount            |
|-------------------------|-------------------|
| baseboards              | \$350.00          |
| drywall                 | \$200.00          |
| deck repair             | \$1080.00         |
| junk removal            | \$450.00          |
| rat/pest control        | \$892.50          |
| unpaid electricity bill | \$898.17          |
| cleaning                | \$380.00          |
| <b>TOTAL AMOUNT</b>     | <b>\$4,250.67</b> |

The following table itemizes pieces from the receipt provided by the contractor dated June 2, 2020. I have reduced amounts herein based on a consideration of the evidence presented by the landlords and have specified gaps in the evidence which reduce the amounts therein. I

provide the amount I grant as compensation in the middle column. Additionally, in this table I set out the claim for lawn repair and wardrobe replacement.

| item                          | amount            | reason  |
|-------------------------------|-------------------|---|
| thermostat switch             | \$50.00           | damaged established in photo; however, value of replacement part not established  |
| garage remote control         | \$0               | value of replacement not established  |
| furniture and garbage removal | \$600.00          | claimed amount is not borne out by photos; however, landlords established that work was significant   |
| paint                         | \$500.00          | landlords did not establish amount of painting involved; photos show only isolated areas of the unit  |
| fireplace repair              | \$75.00           | no photos to show damage, and no account from the landlord to establish cost; however, the damage is noted in the Condition Inspection Report |
| stair carpet – stairs         | \$100.00          | photos show only carpet on stairs; Condition Inspection Report says “carpet” while receipt states “stair repair”                              |
| lawn repair                   | \$0               | receipt provided not specific on this amount; not itemized  |
| wardrobe/closet replacement   | \$0               | no receipt provided to establish the cost   |
| <b>TOTAL AMOUNT</b>           | <b>\$1,325.00</b> |   |

The above tables complete the total amount for \$5,575.67. This amount represents completed work, paid for by the landlords. This is the result of the tenant breaching section 37(2)(a) of the *Act*. The landlords shall receive this amount for compensation.

The landlords’ claims for compensation of previous arbitration filing fees and registered mail costs are not recoverable amounts. The landlords had the opportunity to apply for the filing fees on separate matters, as they have done for this present hearing. In the case of registered mail costs, the *Act* itself does not provide for recovery of other costs associated with serving hearing documents – therefore, the cost of registered mail is not recoverable.

Because they are successful in their application, I grant the \$100.00 cost of the filing fee to the landlords.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlords a Monetary Order in the amount of \$15,675.67. 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 *Act*.

Dated: August 12, 2020

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Residential Tenancy Branch