



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNDL-S, MNRL-S, MNDCL-S, FFL

### Introduction

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

- an Order of Possession based on the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 55;
- a monetary order for unpaid rent and utilities, for damage to the rental unit, and for other money owed arising out of this tenancy pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:18 a.m. in order to enable them to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord gave sworn testimony and provided written evidence in the form of a signed document by a witness that the landlord handed each of the three tenants a copy of the landlord's dispute resolution hearing package and written evidence as it existed at that time on August 21, 2020. On this basis and in accordance with sections 88 and 89 of the *Act*, I find that the tenants were served with these documents on August 21, 2020, as declared by the landlord.

### Preliminary Matters

At the beginning of the hearing, the landlord confirmed information that they had provided in their recent written evidence in testifying that the tenants vacated the rental unit on September 1, 2020. They did so in response to the August 31, 2020 effective date identified by the landlord as the date when their 1 Month Notice was to take effect. Since the landlord already has possession of this rental unit, the landlord withdrew their application for an Order of Possession based on the 1 Month Notice. The landlord's application for an Order of Possession is hereby withdrawn.

The landlord also testified that they had spoken with the tenants in the past few days and the parties had agreed that the landlord would retain their security deposit and that the tenants would pay the landlord for outstanding rent and utilities that remained owing. The landlord said that the tenants had also agreed to compensate the landlord for the cost of replacing the dryer that one of the tenants damaged when they drilled a hole in the dryer as a means of reducing the noise it was creating by inserting oil into the belt of the dryer. The landlord said that the tenants requested time to repay these amounts owing.

The landlord also noted that they had applied for a substituted service order to enable them to serve the tenants by text message. I advised that although the decision on that application had not yet been sent to them, the decision had been made by an adjudicator to dismiss their application for a substituted service order enabling them to serve the tenants by text message. I advised that the landlord will have to find some other way of serving the tenants with any monetary Order that I might make.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and utilities and other losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

On April 26, 2020, the tenants and the landlord signed a fixed term Residential Tenancy Agreement (the Agreement) that was to enable the tenants to reside in this rental unit from April 26, 2020 until October 25, 2020. Monthly rent is set at \$2,095.00, payable in

advance on the first of each month. The landlord continues to hold the \$1,047.00 security deposit paid when this tenancy began.

In their written evidence and in their sworn testimony, the landlord provided a breakdown of rent and utilities paid and rent and utilities that remained owing up until August 31, 2020. The landlord gave undisputed sworn testimony that \$1,407.17 remained owing for the tenants' monthly rent as of August 31, 2020. The landlord provided a breakdown of how they arrived at the tenants' share of utilities (i.e., gas and hydro) that remained owing as of August 31, 2020. In claiming that the tenants owed a total of \$436.21, the landlord explained that this amount was the pro-rated amount of the utility bills they had received for the period when the tenants remained in occupancy of the rental unit.

The landlord provided written and photographic evidence, and sworn testimony that it would cost \$350.00 to replace the dryer damaged during the course of this tenancy. They said that this was their estimate of the cost to replace this one-year old dryer to match the washing machine the landlord had. The landlord said that this was not the cost of a new dryer, but an estimate of the cost of replacing it with a used dryer of the same make and model.

The landlord noted that the amount claimed in their application for a monetary award of \$2,212.46 had changed slightly after the landlord received additional utility bills, which remained unpaid. The landlord's revised application was for a monetary award of \$2,190.38 in addition to the recovery of the landlord's \$100.00 filing fee for their application.

The landlord said that they had discussed other potential claims for damage with the tenants, but had agreed to not claim anything else with respect to this tenancy.

### 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 on the balance of probabilities that the tenants caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Section 7(1) of the *Act* establishes that a party who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the other party for damage or loss that results from that failure to comply. Section 26(1) of the *Act* establishes that “a tenant must pay rent and their portion of the utilities when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.”

Based on the landlord’s undisputed sworn testimony, and written and photographic evidence, I find that the landlord has demonstrated to the extent required that they are entitled to a monetary award of \$1,404.17 for unpaid rent, of \$436.21 for unpaid utilities and of \$350.00 for damage to the landlord’s dryer, which needs replacement.

I allow the landlord to retain the security deposit for this tenancy in partial satisfaction of the monetary award granted in the landlord’s favour. Since the landlord has been successful in this application, the landlord is also entitled to recover their \$100.00 filing fee from the tenants.

### Conclusion

I issue a monetary Order in the landlord’s favour under the following terms, which allows the landlord to recover unpaid rent, utilities and the cost of their filing fee, to obtain a monetary award for damage arising out of this tenancy, and to retain the security deposit for this tenancy:

<b>Item</b>	<b>Amount</b>
Unpaid Rent	\$1,404.17
Unpaid Utilities	436.21
Replacement of Damaged Dryer	350.00
Less Security Deposit	-1,047.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$1,243.38</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these

Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application for an Order of Possession is withdrawn.

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: October 05, 2020

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Residential Tenancy Branch