



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL MNRL-S MNDCL FFL

### Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for a monetary order in the amount of \$28,855.32 for unpaid rent or utilities, for damage to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlords RT, JR and AS (landlords) attended the teleconference hearing and gave affirmed testimony. During the hearing the landlords were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated July 17, 2020 (Notice of Hearing), application and documentary evidence were considered. The landlords testified that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail at an address the landlords were able to find through the assistance of other landlords. A registered mail tracking number was provided, which has been included on the Style of Cause for ease of reference. According to the online Canada Post registered mail tracking website, the registered mail package was mailed on July 20, 2020 and was delivered on July 22, 2020. Section 90 of the Act stated that documents sent by registered mail are deemed served 5 days after they are mailed. Therefore, I find the tenant was sufficiently served as of July 25, 2020.

Given the above, I find this application to be unopposed by the tenant as I find the tenant was duly served on July 25, 2020 and did not attend the hearing. The hearing continued without the tenant present in accordance with Rule 7.1 and Rule 7.3 of the

Residential Tenancy Branch (RTB) Rules of Procedure (Rules), which address consequences for not attending a dispute resolution hearing. Furthermore, in support of my finding that the tenant was sufficiently served, I note that the tenant uploaded a document to the dispute resolution portal, which they could only have done if they had received the access codes on the Notice of Hearing and application.

### Preliminary and Procedural Matters

The landlords testified that in addition to the unpaid rent claimed, the landlord suffered a loss of rent for September 2020, as the tenant refused to vacate the rental unit when served with the Order of Possession, resulting in a Court Bailiff being hired to forcibly remove the tenant and their belongings. As a result, the landlords requested to amend the application to include a rental loss for September 2020 as the Bailiff did not remove the tenant until September 10, 2020 and the rental unit could not be re-rented due to the damage and need of repairs. I find this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement on September 1, 2020 and did not vacate the rental unit until forced to do so by a Bailiff on September 10, 2020, therefore, I amend the application to include \$2,500.00 for loss of September 2020 loss of rent also pursuant to section 64(3)(c) of the Act.

The landlord confirmed their email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. The decision will be mailed to the tenant by regular mail as the landlords did not have an email address for the tenant.

In addition, as the tenant was lawfully forcibly removed from the rental unit by a Bailiff on September 10, 2018, under section 60 of the Act, the landlords had until September 10, 2020, to file this application. I find the landlords filed their application on July 17, 2020, which is within the 2-year timeline stated in section 60 of the Act.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. Monthly rent of \$2,500.00 was due on the first day of each month as listed on the tenancy agreement. The landlords testified that the tenant failed to pay a security deposit and pet damage deposit. As a result, I will not offset either deposit as the landlords stated the tenant failed to pay either deposit.

The landlords monetary claim is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Cleaning rental unit	\$1,200.00
2. Baking soda for cleaning unit	\$10.71
3. Dump fees	\$206.26
4. Photocatalytic air scrubber	\$117.60
5. Cleaning supplies	\$86.56
6. Cleaning/painting/repairs	\$5,361.48
7. Rent owed/loss of rent	\$18,101.00
8. Hydro costs paid by landlord	\$1,600.00
9. Dispute fees (RTB and Supreme Court)	\$220.00
10. Bailiff fees	\$4,351.71
<b>TOTAL</b>	<b>\$31,255.32</b>

Regarding item 1, the landlords testified that they spent \$1,200.00 in cleaning time and for repaint and touch-up, due to the tenant leaving the rental unit in very dirty condition. The landlords also stated that the tenant leaving an unplugged freezer full of unthawed meat and other items which caused a horrible smell throughout the rental unit. Several photos were reviewed during the hearing, which showed mould in the freezer and many unthawed items, some of which that had become liquified. The landlords stated the smell was so bad they had to rent an air scrubber, which will be discussed further for item 4. The landlords submitted an invoice in the amount of \$1,200.00 as claimed for cleaning costs of \$700.00 and \$500.00 for repaint and touch-ups.

Regarding item 2, the landlords testified that they spent \$10.71 in baking soda alone to assist with cleaning what was described as a very dirty and smelling rental unit.

Regarding item 3, the landlords have claimed \$206.26 for dump fees, due to the amount of junk left behind by the tenant that had to be disposed of. The landlords presented

several colour photos showing many garbage bags full of what the landlords stated was garbage and junk. In addition, the landlords presented several receipts, which support the claimed amount of \$206.26 for this item.

Regarding item 4, the landlords have claimed \$117.60 for the cost to rent a photocatalytic air scrubber. The landlords testified that due to the unplugged freezer full of meat and other items that become unthawed, liquified and mouldy, the horrible smell that was left required the air scrubber to remove what all of the cleaning could not. Receipts were submitted which support the amount claimed for this item.

Regarding item 5, the landlords have claimed \$86.56 for extra cleaning supplies required to finish the cleaning in the rental unit. Receipts were submitted in support of this item, which support the amount claimed.

Regarding item 6, the landlords testified that they paid \$5,361.48 to repair purposely damaged walls where there appear to have been a fist and shoe kicked through the wall(s) of the rental unit and that none of the work, according to the landlords, was based on reasonable wear and tear. The landlords stated that the tenant purposely damaged the rental unit and that drywall had to be replaced, smelly areas had to be specially sealed, and repainted. The landlords also submitted a receipt, which matches the amount claimed for this item.

Regarding item 7, the landlords have claimed unpaid and loss of rent owing as follows:

<b>Description</b>	<b>Amount</b>
1. Unpaid January 2020 rent	\$2,500.00
2. Unpaid February 2020 rent	\$2,500.00
3. Unpaid March 2020 rent	\$2,500.00
4. Unpaid April 2020 rent	\$2,500.00
5. Unpaid May 2020 rent	\$2,500.00
6. Unpaid June 2020 rent	\$2,500.00
7. Unpaid July 2020 rent	\$2,500.00
8. Unpaid August 2020 rent	\$2,500.00
9. Loss of September 2020 rent	\$2,500.00
<b>Subtotal</b>	<b>\$22,500.00</b>
<i>(Less \$1,050.00 donation from tenant's church)</i>	<i>-( \$1,050.00)</i>
<i>(Less tenant partial payments of \$800.00, 649.00, 1,000.00, \$700.00 and \$200.00)</i>	<i>-( \$3,349.00)</i>
<b>Total owing</b>	<b>\$18,101.00</b>

The landlords' testimony reflected the table listed above for this item.

Regarding item 8, the landlords presented the tenancy agreement, which supports that heat and electricity were not included in the monthly rent. The landlords testified that the tenant had the electrical/hydro utilities in their name, but eventually the power was shut off, and due to privacy reasons, the landlords could only guess as to the amount owed by the tenant. The landlords kept asking hydro if they paid a specific amount, would the power be turned back on, and \$1,600.00 was the amount where the hydro company stated the power would be turned on if that amount was paid. The landlords paid the hydro company \$1,600.00 in unpaid hydro as a result and are seeking reimbursement from the tenant who they state failed to pay their hydro bills.

Regarding item 9, the landlords have claimed \$220.00 comprised of the \$100.00 RTB filing fee, and \$120.00 for the Supreme Court Write of Possession filing costs, both of which are supported by receipts submitted in evidence.

Regarding item 10, the landlords have claimed \$4,351.71, which the landlords stated was paid to a Court Bailiff due to the tenant refusing to vacate the rental unit after being served with a lawful Order of Possession issued by the RTB. The landlords presented an invoice from the Court Bailiff in the amount claimed, which sets out all of the costs paid totalling \$4,351.71. The landlords stated that the home is 5 bedrooms and had a lot of items to remove, and many items were disgusting, smelly and rotten and the costs were high as a result.

### Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, and as noted above, I consider this matter to be unopposed by the tenant. As a result, I find the landlords' amended application is fully successful in the amount of **\$31,255.32**, which includes the recovery of the cost of the filing fee pursuant to section 72 of the Act in the amount of \$100.00 as the landlords' application is successful. I have considered the undisputed testimony of the landlords and that the application was unopposed by the tenant.

Furthermore, I find the tenant breached section 26 of the Act by failing to pay \$2,500.00 each month as claimed, and only made partial payments reflected on page 4 of this

decision. In addition, a partial payment was also accounted for from the tenant's church, also listed on page 4 of this decision. I find that by failing to vacate the rental unit until September 10, 2020, the landlords also suffered a loss of rent for September 2020 as claimed.

In addition, I find the tenant breached section 37 of the Act, which requires the tenant to leave the rental unit in reasonably clean condition, less reasonable wear and tear. I find the tenant purposely damaged the rental unit and as a result, I will not apply depreciation to this claim due to what I find was purposeful damage to the rental unit by the tenant, and which is supported by the fact the tenant also refused to vacate the rental unit, causing the landlord to suffer additional costs of hiring a Court Bailiff to forcibly remove the tenant, all costs of which, I find the tenant is now liable for.

I grant the landlords a monetary order pursuant to section 67 of the Act, for the amount owing by the tenant to the landlords of **\$31,255.32**.

**I caution** the tenant to comply with sections 26 and 37 of the Act in the future, which requires rent to be paid on the date that it is due and to leave the rental unit in a reasonably clean condition.

### Conclusion

The landlords' application is fully successful. The landlords have been granted a monetary order pursuant to section 67 of the Act, in the amount owing of \$31,255.32. The landlords must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division). The tenant may be held liable for all costs associated with enforcing the monetary order.

This decision will be emailed to the landlords and sent by regular mail to the tenant. The monetary order will be emailed to the landlords only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 10, 2020

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Residential Tenancy Branch