



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT, MNRL-S, MNDL-S, MNDCL-S, FFL

### Introduction

In the first application the tenants seek to recover the equivalent of twelve months' rent under s. 51(2) of the *Residential Tenancy Act* (the "RTA"), arguing that they had been evicted for "landlord use of property" under a two month Notice to End Tenancy but that no one has been living in the rental unit. They seek to recover rent paid under alleged unlawful rent increases imposed by the landlord. They also seek to recover \$200.00 of a pest control cost incurred by them.

In the second application the landlord seeks a monetary award for unpaid rent, monetary loss and the cost of repairing damage to the rental unit.

All three parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Has the landlord or a close family member occupied the property for at least six months starting within a reasonable time after the effective date of the eviction notice as required by s. 51(2) of the *RTA*? Has the landlord imposed unlawful rent increases? If so, what amount of overpayment occurred? Does the landlord owe the tenants \$200.00 for the cost of pest control? Do the tenants owe rent? If so, how much? Did the tenants leave the rental unit reasonably clean and undamaged but for reasonable wear and tear, as the *RTA* requires? If not, what is the reasonable cost for bring the rental unit up to standard?

### Background and Evidence

The rental unit is a five bedroom split-level home. The landlord says there is a written tenancy agreement. The tenants say there isn't. None was produced.

The tenancy started in July 2013 at a monthly rent of \$1600.00, due on the first of each month. The landlord received and still holds an \$800.00 security deposit.

The parties agree that the tenancy ended on September 30, 2019, though the tenants had found a new place for October 1 and commenced residing in the new place in mid-September.

According to the tenant GH, the landlord raised the rent by \$100.00 in July 2015, another \$100.00 in July 2017 and \$50.00 in 2018. GH says he objected to the increases. He admits he knew that a landlord could only raise rent a certain amount each year but didn't know about the rent increase rules. He later appeared to qualify his statement by saying he only became aware of the rent increase rules about six months before leaving. With the landlord's last rent increase, he says the landlord asked for \$75.00 but he negotiated him down to a \$50.00 increase.

GH says that in 2015 there was a rat infestation at the rental unit. He thinks it was because there had been a lot of demolition work going on in the neighbourhood. The landlord brought some traps over but they were ineffective. GH says he paid an exterminator \$400.00 to eradicate the vermin. The landlord paid half by agreement, but now the tenants think it was the landlord's responsibility to pay 100% of the exterminator cost and they want to recover \$200.00.

The tenant MB testified about the rent increases. She says they knew the amount of the increases were "against the law" at the time they were made. She stayed out of complaining about them because she felt she was too confrontational and left it to GH to negotiate increases with the landlord.

MB states that GH and the landlord agreed to split the exterminator cost. It was only later they discovered the rats were entering because of a broken dryer vent, which they consider to be the landlord's job to fix. Thus, the landlord should pay the total of the exterminator bill.

MB testifies that the tenant's paid the August rent but not the September rent because it was the free month of rent they were entitled to on receiving a two month Notice for

landlord use of property. She says they found a new place and slowly started moving in during September and at one point had a moving truck to assist. She says that she returned to the rental unit on October 1 or 2 to retrieve some possessions and finish cleaning but found the door lock had been changed. She spoke to the landlord's wife on the phone who became aggressive and would not come over and let her in. She claims the landlord blocked her telephone number after that and she could not contact him about items left at the premises.

GH says the moving day earlier in September had been a big day. He'd rented a five ton truck and had three friends help. He says there was nothing secret about it. He made some later runs to the rental unit with his own vehicle.

The landlord MP testified He says all the rent increases were by agreement after he'd give "written notice" and that the tenants accepted the increases. He notes that he posted a ten day Notice to End Tenancy for unpaid rent of \$3275.00 on the tenants' door on September 9, 2019.

The landlord provided a breakdown of rent payments showing that as of the end of this tenancy the tenants owed \$3275.00 in unpaid rent. He says he had been lenient with rent payments from the tenants in the past. GH was an hourly worker like himself and the landlord was sympathetic to the ups and downs of work. He says that in July he had property taxes to pay and so needed to receive the rent but it wasn't forthcoming. He suggested the tenants find a smaller place.

The landlord testifies that he had long wanted his son to live in the house and that was the reason for the two month Notice. He says his son moved into the home at the end of November after the home was cleaned and repaired. He says his son continues to live there though his job takes him away and that he often comes over for meals at this parents' house.

The landlord says that during the latter part of the tenancy he had been badgered by local government bylaw enforcement due to complaints about the yard the tenants were keeping. The bylaw enforcement officer ordered him to clean up the junk, garbage and tree waste in the yard. He conveyed that order to the tenants but they did nothing. Ultimately he attended and removed significant waste from the front yard and he cut up for removal various tree limbs and detritus from the back yard. Ultimately he was fined by the local government for the tenants' failure to maintain the yard free of junk and debris, but was able to have the fine overturned on appeal. In September he attempted to attend at the property to remove more waste and junk but the tenants opposed his

attendance. Ultimately the bylaw enforcement officer spoke to the tenants and the landlord was allowed onto the property.

The landlord attended the property on September 4 and took a photo of the front of the home showing various of the tenants' items arranged outside on the front lawn, as if ready to be taken away

The landlord says he attended the property on September 6 and MB told him GH was gone to get a truck to attend to the move out.

The landlord says he attended at the property with the bylaw enforcement officer on September 18. Neither tenant was there. He did not enter though he saw junk inside through a window. He texted GH that night asking the tenants to clean up inside and repair things, but he says he received no response.

The landlord says he attended the property again on October 2. He had heard nothing from the tenants about their having moved out. No one was in the house. The landlord entered and walked through the house. He arranged for the locks to be changed.

Over that day and the next he took photos of the interior condition he observed. The photos show the tenants had left great quantities of garbage, litter and discarded items on the floor. The rental unit still contained items of some possible worth, like a china cabinet, sound equipment like old speakers, a fan and a some lamps. It would appear the tenants still had a washer and dryer in the home. There were multiple small but deep burn marks in the linoleum. Venetian blinds in three of three of the rooms had been significantly broken or bent. The bathtub had a bad reddish stain near the drain. The refrigerator had been badly cracked and broken inside and, says the landlord, contained old, rotten food. The stove had not been cleaned, indeed there was no evidence of cleaning anywhere in the home. The stairs were in a very dirty state. The front door had been marked and badly dented in two places. A bedroom door was missing its entire lockset. There was a fist sized hole in a closet door and another in the rec room wall. Graffiti on the stairway wall and ceiling read: "good for nothing useless landowner." There were bare mattresses on the floor of a bedroom and the rec room as well as two small tables. There was a mattress and box spring under a bush outside. There was an upside down bicycle in the dining room. The basement floor was randomly covered in various small items, tipped boxes, pieces of clothing, plastic containers and undiscernible small items. In the kitchen the dishwasher contained some dishes which the landlord says had not been washed and which were very smelly. The inside of the fridge contained what appear to be a few plastic containers and a

frying pan. The fridge appears very dirty inside. The cupboards were very dirty and in some areas black and green with mould. A kitchen cabinet door was broken. The landlord produced a picture of a syringe and filter cigarette that did not have any tobacco in it. He says he found the items under a rug. He says he found perhaps two dozen syringes in a drawer in the house. The landlord's photos show multiple nail holes in the interior walls; some with the nails still in them.

Outside, on the driveway near the house there was a large pile of discarded items including an old bicycle.

The tenant MB says she returned to the home on October 2 to find the locks had been changes. She says she had returned to get some things and to clean. The landlord was not there so she called the landlord's number and spoke to his wife. She says the landlord's wife was abusive and would not come over to let her in. MB says she still had her washer and dryer in the home as well as a family photo album. MB says she had a cleaning crew on standby, ready to start cleaning.

The tenant GB, while not commenting on the photo of the syringe, noted that if the landlord found 24 other syringes he should have taken pictures of them. He admits the tenants left some things in the home, saying they just didn't have enough time to get everything out.

GB says that after the end of September he drove by the house at least once a week and did not see anyone living there. The curtains were always drawn, the same light was always on and rarely was there a car in the driveway.

GB says the landlord blocked his calls. The landlord says he only started blocking them in November 2020 and did so because the calls were abusive and some were late at night.

Both sides filed letters from friends and neighbours. A large part of the letters were simply character statements, which are not admissible evidence and which I therefore give no consideration. The tenants filed a letter from AJB, apparently the manager at the apartment building they moved to. AJB appears to have accompanied MB to the home on October 2 for her "to retrieve some last minute items" as he says in the letter. He did not mention any plan to clean the rental unit. The landlord has filed a responding letter from the current manager at the tenants' apartment building. I am not satisfied the tenants were given a copy of that letter prior to this hearing and so I give it no consideration.

## Analysis

### The Tenants' Claim for an Amount Equivalent to Twelve Months' Rent

To succeed under this claim the tenants must show that the landlord or a close family member failed to occupy the rental unit for at least six months starting within a reasonable period of time after the end of the tenancy.

The facts related by GH may cause him to be suspicious about whether there was an occupant in the rental unit, but suspicion is not enough to succeed on this claim.

I think it most likely that the rental unit has been occupied by the landlord's son since he end of November 2019 and I dismiss this item of the claim.

### The Tenants' Claim of an Unlawful Rent Increase

The *RTA* prohibits a landlord from imposing a rent increase on a tenant unless the increase is in accordance with the law and regulation imposing a maximum percentage increase each year.

In considering this claim I note that the tenant MB stated that she was always aware of the existence of the law and regulations affecting rent increases but that she left it to GH to negotiate with the landlord.

With the last increase the evidence is that the landlord asked for \$75.00 and the parties settled on a \$50.00 increase.

In the circumstances I find it most likely that the rent increases were not imposed by the landlord but were agreed to between the parties and were thus exempt from the limiting effects of the *RTA* and regulation. The fact that the tenants, or at least MB, were aware of the law and declined to inform themselves further or to rely on that law, is not a defence to their actions. Also of note, despite knowing the law the tenants took no step to raise this issue with the landlord until long after this tenancy ended.

I dismiss this item of the tenants claim.

### The Pest Exterminator Fee

I dismiss this item. The landlord and tenants agreed to a 50/50 split and there is no reasonable basis to upend that agreement merely because the tenants later consider it unfair.

### The Landlord's Claim for Rent

The evidence satisfies me, and I find, that at the end of the tenancy September 30, 2019 the tenants were in arrears of rent in the amount of \$3275.00. The landlord's testimony on this point is not contradicted by any evidence from the tenants and is the same amount as stated in the ten day Notice to End Tenancy issued in September 2019. I award the landlord \$3275.00.

### The Landlord's Claim for Cleaning and Repair

The first consideration under this claim is whether the landlord was entitled to change the locks on the rental unit on October 2, 2019, thus barring the tenants from returning to possibility clean and repair the rental unit themselves.

In my view the landlord was entitled to consider the premises to have been abandoned by the tenants when he attended on October 2. The tenants had been moving out much earlier. They had not requested of the landlord any additional time in the home after the September 30, 2019 end of the tenancy. The tenants had been dilatory in their maintenance of the property to the extent a bylaw enforcement officer had ordered the property to be cleaned up. The tenants had moved from a five bedroom house to an apartment, a much smaller accommodation, and there was no evidence that they had taken any steps to arrange for storage of the great number of items still in the home on October 2. MB says she returned to the home on October 2 in order to get things and clean whereas her witness AJB stated she was there merely to retrieve some last minute items. Having regard to the state of the premises shown in the landlord's photos, it would have taken days just for a person to remove the innumerable items and debris lying around the home before any cleaning could have started. It was reasonable for the landlord to consider the tenants had moved out and left the unwanted items and mess for him to clean up and dispose of. I consider it most likely that the tenants simply took what they needed for their apartment and left the rest.

It should be noted that even when a rental unit has been abandoned, a landlord has an obligation regarding tenant items of value that have been left behind. I would refer the

parties to the abandoned property information on the Residential Tenancy Branch website.

The landlord has filed a list of items and amounts for the damage and cleaning compensation he requests. Even though he may not have paid for some items, like taking away junk, he is entitled to a reasonable compensation for having done so himself.

Plumbing Repair \$1450.00

I dismiss this item. The landlord led no evidence warranting this claim.

House Clean Up Costs \$2000.00

Based on the evidence of the state of the premises on October 2, 2019, I consider the amount of \$2000.00 to be a reasonable cost for the removal of the tenants' belongings left behind and for general cleaning. I award the landlord \$2000.00 under this item.

Dumping of Garbage/Discarded Items \$500.00

I find this to be a reasonable cost considering the number and size of items and garbage left in the home. I award the landlord \$500.00 under this item.

Back Yard Cleanup \$500.00

Having regard to the items shown in the photos submitted by the landlord I consider \$250.00 to be a reasonable cost for this cleanup and I award that amount to the landlord.

Supply and Install Linoleum \$875.00

I consider this a reasonable cost for this work. However, the linoleum was aged to a significant extent and to award the landlord the full cost would put him in a better position than had the linoleum not been damaged at all. I award him \$437.50 for this work and materials.



Kitchen Cabinets \$6500.00

The evidence satisfies me that the kitchen cabinets were dirtied and damaged by mould and staining to such an extent as to require replacement. The cabinets appear to be original to this 1960's era home and a significant discount is appropriate in order to avoid a betterment. In all the circumstances I award the landlord \$1000.00 for cabinet replacement.

Hardwood Floor Cleaning \$500.00

I am satisfied the tenants failed to take reasonable care of the hardwood flooring in the living room and dining room. The floors look to be original and so are very old. There is no evidence of when they were last redone, if ever. In all the circumstance I award \$100.00 for this item of the claim.

Replace Bathtub and Surround \$2000.00

The evidence satisfies me the tenants failed to properly maintain the bathtub area during this tenancy. The staining in the tub is consonant with rust from standing water. The caulking around the tub is blackened with dirt. However, the tub and surround are very old, perhaps original and have lived past any useful life. I award the landlord \$250.00 for this item. Any larger award would be a betterment.

Drywall Repair \$750.00

A tenant is entitled to put small nails in the walls of a rental unit but is expected to remove the nails and patch and sand the holes before leaving (see generally Residential Tenancy Policy Guideline #1, "Landlord & Tenant - Responsibility for Residential Premises"). A landlord is expected to touch up any such repairs. I consider \$300.00 to be a reasonable award under this item of the claim and I award that amount to the landlord.

Painting \$1500.00

The landlord indicated there had been some painting done in the home about six months before the start of this tenancy seven years ago. The graffiti areas will require paint. Anything more will be an unearned benefit to the landlord. I consider \$200.00 to be a reasonable cost for the painting of the area marked by the tenants.

Replace Appliances \$2500.00

The landlord was not clear on what appliances needed replacement. I am satisfied that the fridge has been damaged beyond reasonable use during this tenancy but it appears to be an old and inexpensive model. The stove requires significant cleaning but the landlord has not demonstrated it required replacement. Having regard to the condition of the fridge, I award the landlord \$300.00 for a reasonable, used, replacement.

Bedroom Door \$300.00

I award the landlord \$300.00 as claimed for this item. The door is damaged beyond repair.

Broken Patio Lock \$125.00

There was no evidence presented during the hearing regarding this item. I dismiss it.

Front Door \$500.00

It is apparent from the photos that the front door is marked and dented beyond reasonable repair. I am satisfied this occurred during the tenancy. I consider \$500.00 to be a reasonable cost for replacement and I award the landlord \$500.00.

Blinds \$1000.00

The venetian blinds in three rooms have been damaged beyond reasonable repair. I am satisfied this damage occurred during the tenancy. \$1000.00 is a reasonable cost for replacement, however the blinds appear to be very old. I award the landlord \$500.00 under this item in order to avoid putting him in a better position than had the blinds not been damaged at all.

In total I award the landlord \$6637.50 for damage and cleaning.

Conclusion

The tenants' application is dismissed.

The landlord is awarded \$3275.00 for unpaid rent, \$6637.50 for damage and cleaning, plus recovery of the \$100.00 filing fee for his application.

I authorize the landlord to retain the \$800.00 security deposit in reduction of the amount awarded. He will have a monetary order against the tenants for the remainder of \$9212.50.

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: December 16, 2020

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Residential Tenancy Branch