



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, MNDL, MNRL, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- An Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice);
- Compensation for damage cause by the Tenants, their pets or their guests to the unit, site or property;
- Unpaid rent; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord and their Witness/Support Person (the Witness), both of whom provided affirmed testimony. Neither the Tenants nor an agent for the Tenants attended. The Landlord and the Witness were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondents must be served with a copy of the Application and Notice of Hearing. As neither the Tenants nor an agent for the Tenants attended the hearing, I confirmed service of these documents as explained below.

The Landlord and Witness testified that the documentary evidence before me from the Landlord and the Notice of Dispute Resolution Proceeding, including a copy of the Application and the Notice of Hearing, were sent to each of the Tenants individually by registered mail on November 26, 2020, at the rental unit address, and provided me with the registered mail tracking numbers for both of the packages, which have been recorded on the cover page for this decision. I note that November 26, 2020, is within

the legislative timeframe set out under section 59(3) of the Act, as records at the Branch confirm that the Notice of Dispute Resolution Proceeding was provided to the Landlord on November 23, 2020. The Canada Post website confirms that the registered mail was sent as described above and delivered to a community mailbox for the residential address on November 30, 2020.

Although section 90(a) of the Act states that a document given or served by mail, if not earlier received, is deemed received five days later, as the Canada Post tracking information indicates that the registered mail was delivered to a community mailbox, rather than to the recipients personally, I deem the packages received on December 3, 2020, three days after they were delivered to the community mailbox on November 30, 2020, pursuant to section 90(d) of the Act, which is two days later than they would have been deemed received pursuant to section 90(a) of the Act.

I verified that the hearing details contained in the Notice of Hearing were correct and note that neither the Landlord nor their Witness had difficulty attending the hearing on time, using this information. Based on the above, and as no one raised any arguments at the hearing regarding service or timelines, the hearing therefore proceeded as scheduled, despite the absence of the Tenants or an agent acting on their behalf, pursuant to rule 7.3 of the Rules of Procedure. I also accepted all of the documentary evidence before me from the Landlord for consideration.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

### Preliminary Matters

#### Preliminary Matter #1

At the outset of the hearing the Landlord stated that the matter of possession has already been resolved, as they received an two day Order of Possession from an arbitrator with the Residential Tenancy Branch (the Branch) on January 21, 2021, pursuant to an Application for Dispute Resolution seeking an early end to the tenancy under section 56 of the Act. The Landlord stated that the Order of Possession was

personally served on the Tenants that same day, and that the Tenants vacated one day late, on January 24, 2021.

As a result, the hearing proceeded based solely on the Landlords monetary claims for unpaid rent, damage, and recovery of the filing fee.

### Preliminary Matter #2

The Landlord stated that the amount of outstanding rent has increased since the time the Application was filed on November 17, 2020, and sought to amend the Application at the hearing to include additional rent now owed for December 2020 and January 2021.

Rule 4.2 of the Rules of Procedure states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. I have therefore amended the Application pursuant to rule 4.2 of the Rules of Procedure to include outstanding rent for December 2020 and January 2021.

Although the Landlord stated that their other monetary claim for damage has also increased, I do not find it appropriate to amend these claim amounts at the hearing as I do not find that the Tenants could reasonably have anticipated these increased claim amounts and no Amendment to the Application for Dispute Resolution was filed with the Branch by the Landlord or served on the Tenants. As a result, the Landlord's claim for compensation for damage to the rental unit, site or property proceeded only on the amount claimed in the Application.

### Issue(s) to be Decided

Is the Landlord entitled to recover unpaid rent?

Is the Landlord entitled to compensation for damage to the rental unit, site or property?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

In the previous decision referred to above, dated January 21, 2021, it states that the Landlord assumed this tenancy when they purchased the property in September 2020,

that the monthly rent is \$1,000.00, payable on the first of each month, and that no deposits were collected for this tenancy. It also states that the rental unit is the lower portion of a detached home with other occupants residing in the main floor unit. The Landlord confirmed at the hearing that this information is correct, and that the Tenants have paid no rent for September, October, November, or December of 2020, or January of 2021. As a result, the Landlord sought \$5,000.00 for outstanding rent from September 1, 2020, up to and including January 24, 2021, the date the Tenants, vacated, as well as lost rent for the remaining days of January 2021, as the rental unit could not be re-rented for that short time period.

The Landlord also sought:

- \$437.00 for replacement of two interior doors and an exterior light fixture damaged by the Tenants during the tenancy:
- \$863.00 in garbage removal costs for the removal of interior and exterior refuse left on the property by the Tenants, on the following dates, as the property was unsightly and receiving fines from the city:
  - September 3, 2020;
  - September 21, 2020;
  - September 14, 2020;
  - September 16, 2020; and
  - October 15, 2020.
- Recovery of a \$100.00 fine levied against the property by the city as it was left in an unsightly state by the Tenants; and
- Recovery of the \$100.00 filing fee.

The Landlord submitted substantial documentary evidence in support of their claims, including but not limited to a monetary order worksheet, a significant number of photographs, a bylaw infraction letter from the municipality dated September 2, 2020, regarding the unsightly property, a copy of a \$100.00 fine from the municipality dated September 2, 2020, in relation to the unsightly property, landfill receipts, estimates from a major home improvement retailer for the cost of two interior doors and the exterior light fixture, a ledger for outstanding rent, and copies of the One Month Notice and a 10 Day Notice to End Tenancy for Unpaid rent or Utilities (the 10 Day Notice).

No one appeared at the hearing on behalf of the Tenants to provide any evidence or testimony for my consideration, despite my finding earlier in this decision that the Tenants were each deemed served with the documentary evidence before me from the Landlord and the Notice of Dispute Resolution Proceeding, including a copy of the Application and the Notice of Hearing, on December 3, 2020.

### Analysis

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. It also states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 26 (1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

Based on the previous decision dated January 21, 2021, and the uncontested documentary evidence and testimony before me, I am satisfied that rent in the amount of \$1,000.00 is due under the tenancy agreement on the first day of each month. I am also satisfied on a balance of probabilities, that the Tenants have not paid any rent for September 1, 2020 - December 31, 2020, or January 1 – 31, 2021. As there is no evidence or testimony before me that the Tenants had a right under the Act to deduct or withhold this rent, I therefore grant the Landlord \$4,774.19 in outstanding rent for September 1, 2020 – January 24, 2021, the end date for the tenancy, and \$225.81 in lost rent for the remaining 7 days of January 2021, in which the rental unit could not be re-rented, pursuant to sections 7 and 26 of the Act and Policy Guideline #3.

Having made this finding, I will now turn my mind to the Landlord's claim for damage to the rental unit, site or property. Section 32 of the Act states that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access, must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is not required to make repairs for reasonable wear and tear. Section 37 of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Policy Guideline #1 defines reasonable wear and tear as natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

Based on the uncontested documentary evidence and affirmed testimony before me from the Landlord and the Witness, I am satisfied that the Tenants breached sections

32 and 37 of the Act by failing to maintain reasonable health, cleanliness and sanitary standards and failing to leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear, at the end of the tenancy. I am also satisfied that the Landlord suffered a loss in the amount of \$1,400.00 as a result of these breaches. Further to this, and as there is no evidence before me to the contrary, I am satisfied that the Landlord mitigated their loss by having the above noted clean up and repairs completed as soon as possible and at a reasonably economic rate. As a result, I award the Landlord the \$1,300.00 sought for garbage removal and replacement of two interior doors and an exterior light fixture, and recovery of a \$100.00 bylaw fine levied against the property due to the Tenant's failure to keep it clean.

As the Landlord was successful in their Application, I also award the \$100.00 for recovery of the filing fee, pursuant to section 72(1) of the Act.

Pursuant to section 67 of the Act, I therefore grant the Landlord a Monetary Order in the amount of \$6,500.00; \$5,000.00 for rent between September 1, 2020 – January 31, 2021, \$1,300.00 for damage and garbage removal, \$100.00 for recovery of a bylaw fine, and \$100.00 for recovery of the filing fee.

### Conclusion

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$6,500.00**. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants 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. The Tenants are cautioned that costs of such enforcement may be recoverable from them by the Landlord.

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: February 8, 2021

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Residential Tenancy Branch