



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the tenants: CNR, OLC  
For the landlord: OPRM-DR, OPR-DR, MNDL-S

### Introduction

This hearing dealt with a cross application. The tenants' application pursuant to the Residential Tenancy Act (the Act) is for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to section 46; and
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62.

The landlord's application pursuant to the Act is for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice) pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to sections 26 and 67;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67; and
- an authorization to retain the tenants' security deposit, under section 38;

I left the teleconference connection open until 1:47 P.M. to enable the tenants to call into this teleconference hearing scheduled for 1:30 P.M. The tenants did not attend the hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Witness RS also attended.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the landlord and her witness affirmed they understand it is prohibited to record this hearing.

Preliminary Issue - Tenants' application dismissed

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

**Rule 7 – During the hearing**

**7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

**7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any attendance at this hearing by the tenants, I order the tenants' application dismissed without leave to reapply.

Preliminary Issue - Service of the Landlord's application

I accept the landlord's testimony that the tenants were served with the application and evidence (the materials) by registered mail on February 02, 2021, in accordance with section 89(2)(b) of the Act. The landlord served the amendment by registered mail on March 22, 2021 (the tracking numbers are recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenants are deemed to have received the materials on February 07, 2021 and the amendment on March 27, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondents.

Preliminary Issue – Order of Possession

At the outset of the hearing the landlord testified the tenants abandoned the rental unit on March 31, 2021.

The application for an order of possession is moot since the landlord has possession of the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be

determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order of possession.

### Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. a monetary order for loss?
3. an authorization to retain the tenants' security deposit?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is her obligation to present the evidence to substantiate the application.

The landlord affirmed the periodic tenancy started on September 15, 2020 and ended on March 31, 2021. Monthly rent was \$1,650.00 due on the last day of the prior month. At the outset of the tenancy a security deposit of \$825.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence. There was no move in and move out inspection. The tenants did not provide their forwarding address.

The landlord stated the tenants did not pay rent in January, February and March 2021. The landlord is claiming for this loss in the amount of \$4,950.00. The landlord served the tenant the Notice on January 08, 2021 by attaching it to the rental unit's door. The Notice indicates the tenants did not pay rent in the amount of \$1,650.00 due on January 01, 2021.

The landlord testified she lives in the main house and the tenants occupied the furnished 2-bedroom 750 square feet basement rental unit. The landlord and witness RS said the rental unit was built in the spring of 2019 and it was in perfect conditions when the tenancy started.

The landlord affirmed in March 2021 the tenants damaged the next-door neighbours' fence and backyard. The neighbour paid \$320.00 for 16 hours of labour at \$20.00 per hour to repair the fence, \$380.00 for the repair material and \$1,000.00 for the damaged plants. The neighbours sent a letter to the landlord on March 14, 2021:

Several weeks back, as they proceeded down their driveway (or backed up?) they severely damaged our fence and gate. The fence corner post, mounted in a 12" diameter concrete form tube, and supposedly indestructible, was knocked over. A whole section of fence came down. They must have hit our structure at quite a speed to ruin it so completely! At the same time, our garden adjacent to their driveway sustained some damage. Half of the Japanese Maple and various perennial bushes were squashed.

[...]

We do not want you to absorb these costs yourself. Is there anything left in the damage deposit to cover this? Could you garnishee their wages?

The landlord is going to pay her next-door neighbours the total amount of \$1,700.00 because she wants to have a good relationship with them.

The landlord and witness RS affirmed when the tenancy ended the rental unit was not clean, there was candy in the heater, the dishwasher had muddy water and food was left in the rental unit. The landlord paid \$90.00 for cleaning the rental unit and the removal of the tenants' personal items and food.

The landlord and witness RS stated when the tenancy ended the walls had indelible ink, all the doors had large holes, the handles were damaged, and the windows coverings were stained. The landlord paid \$1,440.00 to paint the walls and to repair the doors.

The landlord and witness RS testified when the tenancy started the carpet was new and when the tenancy ended the bedroom carpet had water damage and cigarette burns. The carpet needs to be replaced and the estimate to replace it is \$840.00. The bedroom is around 200 square feet.

The landlord affirmed the rental unit had an antique table in perfect conditions when the tenancy started and the landlord instructed the tenants to use a protective covering. The tenants refused to use the protective covering offered and damaged the table's surface. The estimate to repair the antique table is \$300.00.

The landlord and witness RS believe the tenants intentionally damaged the rental unit.

The landlord is claiming for unpaid rent in the amount of \$4,950.00 and damages in the amount of \$2,500.00.

## Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

## Unpaid rent

I accept the landlord's uncontested testimony that the tenancy agreement requires the tenants to pay monthly rent of \$1,650.00 on the last day of the prior month.

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

Based on the landlord's undisputed testimony and the Notice, I find the tenants are in rental arrears in the amount of \$4,950.00 for the months of January, February and March 2021. I award the landlord \$4,950.00 for unpaid rent.

Fence and backyard damage

I accept the uncontested landlord's testimony and the March 14, 2021 letter that the tenants damaged the neighbours' fence and backyard. The landlord decided to compensate her neighbours because she wants to have a good relationship with them, not because of a legal requirement. The landlord failed to prove, on a balance of probabilities, that she suffered a loss or damage due to the tenants' non-compliance with the Act.

As such, I dismiss the landlord's claim.

Cleaning

Section 37(2) of the Act states:

Leaving the rental unit at the end of a tenancy

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

Residential Tenancy Branch Policy Guideline 1 states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

Based on the undisputed testimony provided by the landlord and witness RS, I find the tenants breached section 37(2)(a) of the Act by not cleaning and removing their items and the landlord suffered a loss of \$90.00 because of the tenants' failure to comply with the Act.

Thus, I award the landlord \$90.00 in compensation for cleaning.

Painting and door repair

Section 32(3) of the Act states: “A tenant of a rental unit 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.”

Residential Tenancy Branch Policy Guideline 1 states:

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
- 3. The tenant is responsible for all deliberate or negligent damage to the walls.**

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises.

**The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.**

**(emphasis added)**

Based on the undisputed testimony provided by the landlord and witness RS, I find the tenants breached sections 37(2)(a) and 32(3) of the Act by not painting the walls and repairing the damaged doors and the landlord suffered a loss because of the tenants' failure to comply with the Act.

Residential Tenancy Branch Policy Guideline 40 states the useful life of interior painting is 4 years. The interior painting was about 2 years old when the tenancy ended.

The landlord did not submit an invoice for the painting costs and to repair the rental unit's doors. The landlord's testimony was not detailed. Considering the size of the rental unit and the age of the painting when the tenancy ended, I award the landlord compensation in the amount of \$600.00.

Thus, I award the landlord \$600.00 in compensation for painting expenses and to repair the rental unit's doors.

Carpet replacement

Based on the testimony provided by the landlord and witness RS, I find the tenants breached section 32(3) of the Act by not replacing the bedroom carpet that was damaged during the tenancy and the landlord suffered a loss because of the tenants' failure to comply with the Act.

Residential Tenancy Branch Policy Guideline 40 states the useful life of carpet is 10 years. The carpet was less than 1 year old when the tenancy ended.

The landlord did not provide an invoice for the carpet replacement cost. The landlord's testimony was not detailed. Considering the size of the bedroom, I award the landlord compensation in the amount of \$300.00.

As such, I award the landlord compensation in the amount of \$300.00 for carpet replacement.

Table repair

Based on the convincing testimony provided by the landlord and witness RS, I find the tenants breached section 32(3) of the Act by damaging the antique table and the landlord suffered a loss of \$300.00 because of the tenants' failure to comply with the Act.

Thus, I award the landlord \$300.00 for this loss.

Summary

As explained in section D.2 of Policy Guideline #17, the monetary amount or cost awarded to a landlord may be deducted from the deposit. I order the landlord to retain the \$825.00 deposit.

In summary:

Item	Amount
January, February and March 2021 rent (\$1,650.00 per month)	\$4,950.00
Cleaning and removal of items	\$90.00
Painting and door repair	\$600.00
Carpet replacement	\$300.00
Table repair	\$300.00
Total	\$6,240.00



Subtract deposit	-\$825,00
<b>Monetary award</b>	<b>\$5,415.00</b>

Conclusion

Pursuant to sections 38(4)(b), 26, 67 and 72 of the Act, I authorize the landlord to retain the \$825.00 deposit and grant the landlord a monetary order in the amount of \$5,415.00.

The landlord is provided with this order in the above terms and the tenants must be served with this order in accordance with the Act. 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.

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: April 21, 2021

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Residential Tenancy Branch