



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### **Introduction**

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

- a monetary order for compensation for unpaid rent, money owed, or monetary loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 pm. The landlords 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 online teleconference system that the landlords and I were the only ones who had called into this teleconference.

The landlords were clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The landlords confirmed that they understood.

The landlords testified that the tenants were served with the landlords' application for dispute resolution hearing package ('Application') and evidence on package on May 21, 2021 by way of registered mail. The landlords provided the tracking information in their evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenants deemed served with the landlord's application and evidence on May 26, 2021, 5 days after mailing. The tenants did not submit any written evidence for this hearing.

### **Issue(s) to be Decided**

Are the landlords entitled to monetary compensation as requested for losses or money owed?

Are the landlords entitled to recover the filing fee for this application from the tenants?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on August 1, 2020, with monthly rent set at \$1,600.00, payable on the first of the month. The landlords had collected a security deposit in the amount of \$800.00, which the landlords still hold.

The landlords filed this application as the tenants had moved out on April 16, 2021 without providing formal written notice to the landlords, and without paying any rent for April 2021. The landlords testified that the tenants had originally informed the landlords verbally and through text message that they would be moving out in May 2021. The landlords testified that they had advertised the rental unit immediately, and were able to find a new tenant for June 1, 2021. The landlord is seeking a monetary order for unpaid rent for April 2021, and loss of rental income for May 2021.

The landlords are also seeking a monetary order for the tenant's' failure to clean the carpets as agreed upon, and for causing damage to the countertops. The landlords submitted a photo of the countertop where there appears to be a burn mark from a pot or pan. The landlords testified that they had obtained a quotation for the countertop replacement but in order to mitigate any further losses of rental income, they had decided to re-rent the suite as soon as possible, and put the replacement on hold.

The landlords are requesting the following monetary orders as set out in the monetary order worksheet:

<b>Item</b>	<b>Amount</b>
Unpaid Rent for April 2021	\$1,600.00
Loss of Rental Income for May 2021	1,600.00
Carpet Cleaning	150.00
Countertop replacement quotation	550.00
Recovery of Filing Fee	100.00

Total Monetary Order Requested	\$4,000.00
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### **Analysis**

Section 26 of the Act, in part, states as follows:

#### **Rules about payment and non-payment of rent**

- 26** (1) A tenant must pay rent 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.

I accept the undisputed evidence of the landlords that the tenants moved out on April 16, 2021, and did not pay any rent for the month of April 2021. I allow this portion of the landlords' application for the unpaid rent.

Section 45 of the *Residential Tenancy Act* reads in part as follows:

#### **Tenant's notice**

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
  - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the tenants did not end this tenancy in a manner that complies with the *Act*, as stated above. The landlords did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this tenancy. The evidence is clear that the tenants did not comply with the *Act* in ending this periodic tenancy as they never gave notice in a manner required by section 45(1) of the *Act*. I am satisfied that the landlords had mitigated their losses as is required by section 7(2) of the *Act*, and found a new tenant for June 2021. Accordingly, I find the landlords are entitled to recover the lost rental income for May 2021.

Section 37(2)(a) of the *Act* stipulates 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.

I am satisfied that the landlords had provided sufficient evidence to support that the tenants failed to clean the carpet, and caused damage to the countertops. Although the landlords have yet to repair the countertops, I find the landlords had provided a reasonable estimate for the repair, and an explanation for why they have not completed the repair yet. I find the landlords are entitled to recover the losses as claimed.

I allow the landlords to recover the filing fee for their application.

The landlords continue to hold the tenants' security deposit of \$800.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' security deposit partial satisfaction of the monetary claim.

### **Conclusion**

I issue a \$3,200.00 Monetary Order in favour of the landlords as set out in the table below.

<b>Item</b>	<b>Amount</b>
Unpaid Rent for April 2021	\$1,600.00
Loss of Rental Income for May 2021	1,600.00
Carpet Cleaning	150.00
Countertop replacement quotation	550.00
Recovery of Filing Fee	100.00
Less Security Deposit Held	-800.00
<b>Total Monetary Order</b>	<b>\$3,200.00</b>

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.

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: November 17, 2021