



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL, FFL

### Introduction

This hearing was scheduled to convene at 1:30 p.m. on January 14, 2022 concerning an application made by the landlords seeking a monetary order as against the tenant for damage to the rental unit or property and to recover the filing fee from the tenant for the cost of the application.

One of the landlords attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for in excess of 15 minutes prior to hearing any testimony, and no for the tenant joined the call.

The landlord advised that the tenant was served with the Notice of Dispute Resolution Proceeding and all other required documents by registered mail on July 26, 2021 and has provided a Canada Post cash register receipt containing that date. The registered mail was sent to the tenant at the address the tenant had provided on the move-out condition inspection report, but was returned undelivered. The landlord re-sent the documents by registered mail on December 22, 2021 to the same forwarding address which was also returned to the landlord unclaimed. The landlord also served the documents by email.

### Issue(s) to be Decided

Have the landlords established a monetary claim as against the tenant for damage to the rental unit or property?



### Background and Evidence

The landlord testified that this fixed-term tenancy began on July 15, 2018 and ended on July 15, 2019 with notice to end the tenancy given by the tenant. Rent in the amount of \$2,200.00 per month was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,100.00. The rental unit is a single family dwelling, a 2 story character house, and a copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that a hearing was held on November 25, 2019 and a Decision was provided to the parties on December 12, 2019 concerning an application made by the landlords seeking monetary orders for damages and for damage or loss, as well as an application permitting the landlords to keep the security deposit. The Arbitrator ordered that the landlords could keep the \$1,100.00 security deposit and provided the landlords with a monetary order for \$737.00. The landlords had provided 2 Monetary Order Worksheets however the landlords didn't have all costs right away, and due to a clerical error on the landlord's part, there was only a certain amount that could be included, and the second Monetary Order Worksheet had to be considered by another application. The landlords were permitted to re-file for the balance of the amounts owed within 2 years.

I advised the landlord that it was necessary for me to review the Decision made on December 12, 2019, and the landlord was given the opportunity to provide a copy after the hearing had concluded.

The Monetary Order Worksheet that was not dealt with in the December 12, 2019 hearing has been provided for this hearing, which totals \$2,736.98, for:

1. \$105.00 for drywall repair;
2. \$99.00 for resetting the oil furnace;
3. \$2,510.00 for cleaning and repair; and
4. \$22.98 for a replacement coat rack.

The landlord testified that:

1. The rental unit had been completely renovated and painted a couple years prior to this tenancy. Photographs have also been provided for this hearing, and the landlord testified that the hole in the downstairs master closet/baseboard did not



exist prior to this tenancy. An Invoice in the amount of \$105.00 has also been provided for this hearing.

2. The furnace runs on oil, and a tank sits outside of the rental home, and the tenant allowed the tank to run dry causing the furnace to shut down. It is not a regular maintenance fee, and the tenant knew that the furnace would shut down if it was allowed to run dry.
3. The landlord completed the cleaning and painting, and had contacted a cleaning company for a quote, which was \$35.00 per hour in addition to GST and the cost of products used. The tenant didn't clean at all prior to vacating the rental unit, leaving it in a putrid state, including urine and animal scratches. No pets were permitted but the tenant had sublet a portion of the rental home and the sub-tenant had cats and also moved in a dog. All appliances were filthy, and the entire house required re-painting due to scratches and nicks everywhere, with the exception of wall-papered walls. The tenant had agreed to take care of the trees and grass, but a willow tree was overgrown and blocking the sidewalk at the end of the tenancy.
4. A coat rack was screwed into the wall by door and tenant took it off the wall and took it at the end of the tenancy, leaving a spot on the wall.

### Analysis

Firstly, the landlord testified that the tenant was served by registered mail on July 26, 2021 to an address of the tenant as provided on the move-out condition inspection report which was dated July 16, 2019, but has not provided any evidence that the tenant still resided at that forwarding address 2 years later.

Further, I have reviewed the Decision dated December 12, 2019 which deals with the additional claims made by the landlords, as follows:

"In this case, the landlords filed their application for dispute resolution on July 30, 2019, claiming the amount of \$5,200.00. The monetary work sheet dated August 11, 2019, in support of their application shows the amount claimed was \$1,760.30 for damages, and loss of rent of \$2,200.00 for a total amount of \$3,960.30. There are no details for the difference between the amount claimed of \$5,200.00 and actual amount claimed of \$3,960.30.

"On November 6, 2019 the landlords filed a revised monetary worksheet increasing the amount of their monetary worksheet to \$5,397.27 and loss of rent of \$2,200.00 for a total amount claimed of \$7,597.27.



"I find the landlords did not file an amendment to their application increasing their original claim. A monetary worksheet is not an amendment. Further, I find it is an unreasonable delay as these were all items they could have filed with their original application, or within a reasonable time thereafter.

"Therefore, I will only consider the items in the original monetary worksheet filed on August 11, 2019, and the loss of rent that was in their application."

The Monetary Order Worksheet considered in that Decision is as follows:

- a. Oil tank fuel \$ 1,159.82
- b. Unpaid utilities \$ 196.79
- c. Disposal fees, green materials, leave and mattress \$ 43.80
- d. Fuel cost for going to dump and materials \$ 60.00
- e. Blind replacement \$ 80.84
- f. Drywall mud, paint \$ 150.91
- g. Cleaning supplies \$ 68.14
- h. Loss of rent \$ 2,200.00
- i. Filing fee \$ 100.00
- Total claimed \$ 3,960.30.

The Decision does not dismiss the second Monetary Order Worksheet with leave to reapply for further damages, and the revised Monetary Order Worksheet that was not considered in the December 12, 2019 Decision seeks the following, for a total of \$5,298.27:

- \$1,159.82 for filling the oil tank;
- \$196.79 for a utility bill;
- \$20.15 for urine destroyer;
- \$135.50 for paint;
- \$60.00 for fuel for going to dump and obtaining materials;
- \$80.84 for replacing blinds;
- \$8.00 for dumping green material and leaves;
- \$19.80 for discarding leaves;
- \$8.00 for dumping green material;
- \$15.41 for drywall mud;
- \$8.00 for dumping a mattress;
- \$25.54 for cleaning supplies;
- \$22.45 for cleaning supplies;



- \$22.98 for replacement of a coat rack;
- \$2,510.00 for cleaning and repair labor;
- \$105.00 for drywall repair; and
- \$899.99 for replacement of a mattress.

The Monetary Order Worksheet provided for this hearing claims the following, which totals \$2,736.98, for:

1. \$105.00 for drywall repair;
2. \$99.00 for resetting the oil furnace;
3. \$2,510.00 for cleaning and repair; and
4. \$22.98 for a replacement coat rack.

*Res Judicata* is a legal term which prevents the re-hearing of an application. I refer to a case from the Supreme Court of British Columbia (underlining added):

Mr. Justice Hall of the Supreme Court of British Columbia, in the case *Leonard Alfred Gamache and Vey Gamache v. Mark Megyesi and Century 21 Bob Sutton Realty Ltd.*, Prince George Registry, Docket No. 28394 dated 15 November, 1996, quoted with approval the following passage from the judgement of *Henderson v. Henderson*, (1843), 67 E.R. 313.

In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.



Therefore, I find that the application of the landlords has already been heard. I do not accept that special circumstances exist to permit the landlords to open the same subject of litigation in respect of this matter.

The landlord's application is hereby dismissed without leave to reapply.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed without leave to reapply.

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: January 19, 2022

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Residential Tenancy Branch