



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, MNDCT, RR, MNRT, LAT, RP, OLC, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for the following:

- an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated October 9, 2021 ("10 Day Notice");
- a monetary order of \$3,300.00 for damage or compensation under the Act;
- a rent reduction of \$1,700.00 for repairs, services or facilities agreed upon, but not provided;
- a monetary order of \$7,000.00 for the cost of emergency repairs;
- authorization for the Tenant to change the lock;
- an Order for repairs to the unit/property, having contacted the landlord in writing to make repairs, but they have not been completed;
- an Order for the Landlord to Comply with the Act or tenancy agreement; and
- to recover the \$100.00 cost of his Application filing fee.

The Tenant, J.L., the Landlord, M.F., and two agents for the Landlord, R.C., and D.C. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it.

During the hearing, the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenant said he served the Landlord with the Notice of Hearing documents in person on September 23, 2021, and that he emailed and mailed all of his evidence to

the Landlord. The Agents said that the Landlord received photos of evidence at the end of December 2021, and in early January 2022.

The Agents said that the Landlord responded to the Tenant's evidence by sending two registered mail packages on January 10, 2022. The Tenant said that he received these documents two days prior to the hearing.

I find that both Parties were delayed in sending their evidence to each other, although they both acknowledged having received it from the other Party. I advised the Parties that if the other Party introduced evidence that the first Party had not seen, to so advise me at the time; however, no one so advised me of this during the hearing. Neither Party opposed proceeding with the hearing based on service of evidence, nor did anyone request more time to review the other Party's evidence.

#### Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application, and the Parties confirmed these addresses in the hearing. One of the Agents also provided his email address for receipt of the Landlord's copy of the Decision. The Parties also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Early in the hearing, the Parties agreed that the Tenant had vacated the rental unit on November 12, 2021. As such, the Tenants' Application to cancel the 10 Day Notice is no longer relevant, and I dismiss it without leave to reapply. However, the Landlord advised that he still seeks recovery of unpaid rent from the Tenant for August, September and 12 days in November of 2021. Section 55 (1.1) of the Act allows a landlord to claim unpaid rent when a tenant unsuccessfully applies to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. As such, we continued the hearing on these bases.

#### Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order, and if so, in what amount?

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Are the Tenants entitled to recovery of their \$100.00 Application filing fee?

### Background and Evidence

The Parties agreed that the periodic tenancy began on June 23, 2021, with a monthly rent of \$1,900.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$950.00, and no pet damage deposit. The Agents said that the Tenants failed to pay rent for August, September, and 13 days in November 2021, which I infer should have been 12 days, as the Parties agreed that the Tenant vacated the unit on the 12th.

**#1     AirBnB Stay for Tenants → \$3,300.00, and**

**#2     Rent reduction for services/facilities not provided → \$1,700.00**

The testimony and documentary submissions for these two claims were interwoven, therefore, I combined them for the presentation of evidence and argument.

The Tenant testified, as follows:

[L.] and I moved into the unit. And we had no walk-through of the unit. [L.] moved in to the unit with the baby. The carpets were unclean, we had no proper walk-through, the keys were just left there on the counter. We came into the unit and the main bathroom was going to be under construction, so they told us not to use it.

The offset bathroom was what [the Landlord] told us to use. But it started to leak into the unit down below – we shut off the water. And we couldn't use either bathroom. He said to get a plumbing company.

We got an AirBnB until this was fixed, and it was not fixed until September. So, we stalled in rent payment until they had the unit fixed. My wife did not know how to deal with any of this. I'm a foreman. [The Landlord] took off for Europe a few days after we moved in. He put me in charge of this, but after the fact we found out that his daughter and son were in [the City]. Why didn't they take care of it, instead of me?

I was taking care of these guys when I was there. This is all documented via email back and forth with [the Landlord]. The plumbing company had to come in

until mid-September. It's all documented. And then his daughter and son got involved.

We're claiming \$3,300.00 for having to stay in an AirBnB while this place was under construction. And \$7,000.00 for my wage for my time working on this place.

The Agents responded:

I think we have a difference of opinion of the events. [The Tenant] did email my father to let him know that the *en suite* was leaking, and he reached out and he had a plumbing company come in. [B.J.'s] plumbing agreed to take over the job. My Dad didn't hear from [the Tenant] again.

When [the Tenant] moved in, both bathrooms were working. The bathroom/shower bathroom was to be worked on while they were out of the unit in Columbia. It was fully usable the whole time. See the plumber's notes, who spoke to the condition at the beginning.

The Landlord submitted an invoice from the plumber dated August 30, 2021, with a detailed list of activities carried out by the technicians on July 16, 2021, with two technicians working for seven hours, and on July 28, 2021, with one technician working for an hour and three-quarters.

The Agents continued:

AirBnB – my father agreed to pay, with no other communication from anyone. My father was in England and my Dad responded immediately. He is very reachable, and he reached out and responded to their AirBnB request. There was never an agreement for [the Tenant] to take on the project.

As well as the AirBnB receipts [the Tenant] supplied us. We spoke with the host of the AirBnB, and she confirmed that this stay never occurred. She said that the stay never occurred for July through two weeks in August. They had 13 guests for that unit in July alone. A 6-week stay for a couple never occurred. The receipt with [the Tenant's] name – was fraudulent. They never stayed there at all.

The Landlord submitted a copy of the AirBnb invoice that the Tenant had submitted into evidence, claiming recovery of that expense. However, the Landlord also submitted an

email dated September 16, 2021 from the person, [A.M.], identified on the invoice as the “host” of the Tenants’ AirBnb rental. She stated the following in this email:

As discussed on the phone during the timeframe that your guests says he stayed with us we had 13 turnovers for the month of July alone in unit [unit address on the invoice].

The Tenant commented that he used his middle name for this rental; however, a copy of the AirBnb invoice on which the Tenant is depending to establish this aspect of his claim has his first and last name, with no mention of a middle name.

### **#3     Emergency Repairs Compensation for Tenants → \$7,000.00**

The Tenant said:

After the start of communication with the father – yes, I communicated with him in Europe – the guy below and I called [B.J.] plumbing, and I organized it. So, I took responsibility to call the plumbing company. Then I notified [the Landlord]. I never knew of his daughter and son. He said yes, take care of the work, was his response to ‘the unit is leaking into the unit below’. I said this is what we need to do, and he said to do it.

I spoke to [M.], the owner of a bunch of AirBnb units [there]. My family came back in February 2020, and we stayed at an AirBnb the entire time. I got to know the owner of the unit. He’s the one who sent me the receipt. [A.M.] was let go and fired, and she no longer takes care of the unit.

I didn’t get back to [the Landlord] until August, because we were working on the unit until that time. There’s no point for a back and forth, regarding getting organized and getting the people organized. Then they turn around and do not think that I’m the one who did all this. And my wife with a new born.... We were put in a situation of a leaky condo, and we did our best to help them out with their unit, while the owner is in Europe.

In his written statement, the Tenant said:

When [the Landlord] and his wife finally came back from vacation, I told them everything that had happened and we agreed up the money we used for the Airbnb from July- mid august , could be exchanged for the rent from August 15 -

31 and Septembers rent, literally it almost balances itself out and he would deduct the labor from me working , for \$200 off rent each month. [L.], [the Landlord], and I all agreed this was fair. We would adjust the lease paper. Then 3 days later he said no I changed my mind, don't want to do it anymore... Then it turned into a battle of emails, [the Landlord] breaking and entering on [L.] , while she was changing, without a 24 hour notice, said he was trying to serve her with a 10 day eviction notice. We called the cops on him. Then I started with the paperwork to dispute this 10 day notice and here we are. .

[reproduced as written]

The Tenant submitted two invoices with his hours of work in which he said he was supervising the plumbers. In his first invoice, he billed 10 hours a day from July 10 – 13<sup>th</sup>, 2021, with the work description of: “let plumbing contractors in, supervise all day”. The Tenant’s second set of billed hours in this invoice had descriptions that included:

- 3 hours on July 22: “drove and picked out tile today as per [Landlord]”;
- 10 hours on July 23: “let tile contractor in supervise for the day”;
- 10 hours on July 24: “let grout contractor in supervise the work”; and
- 10 hours on July 25: “let plumber in, to finish plumbing, supervise”.

The Tenant billed \$70.00 per hour for this work.

In his second invoice to the Landlord for this work, the Tenant billed 30 hours of time in August 2021, including:

- 10 hours to supervise the drywaller and finisher for work on the unit below;
- 10 hours to supervise the painter for the second day;
- 10 hours supervising the drywaller, finisher, and the painter.

The Tenant submitted a text conversation he had with the tenant in the unit below, whom the leak affected. This conversation addressed the Tenant having arranged the plumber to attend the residential property to fix the leak, and that the plumber would need access to the lower apartment, as well. In the latter part of this text exchange, the Tenant and the lower tenant said:

Tenant:

25 year old condo.. he thinks they will have to remove the drain and shower from my unit and needs access to your, fix properly, so this will

never leak again.. he's just going to do a quote up today and then when we can get a day to fix sooner rather than later.

Lower Tenant:

Okay, thanks for the update.... Awesome. Thanks for organizing all this! We typically work from home, so most days should work for us. All the best to you, [J.]!...

...

Hey [J.]!

The plumbers are all done here.

They said that you are coordinating a general contractor to come to repair the hole in the ceiling. Do you know when they will come by?

The Landlord submitted a letter dated September 20, 2021, that he had received from the office manager of the plumbing company. This included:

Good morning [M.],

I was able to touch base with our technician Pete about the details we discussed. I was able to confirm that the water was absolutely **not** shut off to the unit for the duration of the two weeks. The water was only shut off to replace the shower valve in the affected unit, which would have only been a matter of an hour or two. He also confirmed that he did mention that the extra bathroom shower would need to be re-done, but that he could absolutely go ahead and use it in the meantime.

[emphasis in the original]

#### **#4 Recovery of Unpaid Rent for Landlord →\$4,623.29**

The Agents said that the Landlord claims rent from the Tenant for August, September, and 13 days in November 2021, as they say the Tenants did not pay rent for these periods while living in the rental unit. The Tenant did not dispute having rented the unit during this time period (aside from having vacated on November 12<sup>th</sup>, and not the 13<sup>th</sup>), but not having paid rent, as the Landlord has claimed.

#### Analysis

Based on the documentary evidence and the testimony provided during the hearing,

and on a balance of probabilities, I find the following.

**#1     AirBnB Stay for Tenants → \$3,300.00**

The Landlord's email from the host of the Tenant's AirBnB invoice clearly denied that the Tenants stayed there during their claimed stay. In the hearing, the Tenant said that he had gone by his middle name, and he questioned whether the Landlord had searched under this name; however, the invoice that the Tenant submitted for this charge has his first and last name as the client.

I also note and find it odd that the Tenant did not claim the full amount set out on the AirBnb invoice, but rather, he rounded it down. This raises questions in my mind about the Tenant's evidence in this regard.

Further, I find that the Tenant's comment about using his middle name is a fabrication, which reduces the Tenant's credibility and the reliability of his evidence. Based on the evidence before me overall on this point, I find that it is more likely than not that the Tenant did not stay in the AirBnB, as he claimed. As such, and pursuant to section 62 of the Act, I dismiss this claim without leave to reapply.

**#2     Rent reduction for services/facilities not provided → \$1,700.00**

Further to my finding that the Tenants did not stay in the AirBnB during the repair to the rental unit bathroom leak, I must determine where they did stay. I note the Landlord's evidence that the main bathroom was in working order when the *en suite* bathroom was under repair.

As the plumber noted above, the water in the rental unit:

...was absolutely **not** shut off to the unit for the duration of the two weeks. The water was only shut off to replace the shower valve in the affected unit, which would have only been a matter of an hour or two.

The plumber also said that the other bathroom was due for renovations, about which the Tenants had been advised before they started the tenancy. The plumber continued, saying that the Tenant "...could absolutely go ahead and use it in the meantime." I find that the plumber is an objective third party who is more likely than not a disinterested professional who has provided reliable evidence. I find that the rental unit did have a full bathroom for the Tenants to use during their stay.



Based on the evidence before me overall, I find that there was no need for the Tenants to vacate the rental unit during the bathroom repairs, as they were able to use a full bathroom for the duration of their stay. I find it more likely than not that the Tenants remained in the rental unit during this time, when they claimed to be at the AirBnb, and I, therefore, and pursuant to section 62 of the Act, dismiss this claim without leave to reapply.

### **#3 Emergency Repairs Compensation for Tenants → \$7,000.00**

The Tenant is claiming significant wages for “handling” the repairs, although the Tenant did not refer me to evidence that he and the Landlord agreed to this work at the rate the Tenant quoted. Further, it is not clear what the Tenant did for 10 hours a day at \$70.00 an hour. I find it inconsistent with common sense and ordinary human experience that a plumber would need to be supervised by a tenant. In addition, there was no evidence presented to me establishing that the plumber was there for 10 hours a day. These inconsistencies raise questions in my mind about the veracity of the Tenant’s evidence.

Based on the evidence before me overall, I find that the Tenant has not provided sufficient evidence to establish that he had an agreement with the Landlord to do this work, or that there was any work for him to do, and especially not at \$70.00 an hour. I find that it is more likely than not that the Tenant fabricated the supervision work he did, as well as his invoices. I find the Tenant lacks credibility and reliability for this claim, and therefore, I dismiss it without leave to reapply, pursuant to section 62 of the Act.

### **#4 Recovery of Unpaid Rent for Landlord →\$4,623.29**

Section 26 of the Act states: “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 this Act to deduct all or a portion of the rent.” I find that there is insufficient evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

Section 55 (1.1) states that if a tenant applies to dispute a landlord’s notice to end a tenancy, then the director must grant an order requiring the payment of the unpaid rent by the tenant, if the following circumstances apply:

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's

application or upholds the landlord's notice;

I find that the 10 Day Notice complies with section 52 of the Act, as to form and content. Further, I uphold the Landlord's 10 Day Notice to end the tenancy. Accordingly, I find that the Landlord is eligible for a monetary order pursuant to the Tenants' Application to cancel the 10 Day Notice.

The undisputed evidence before me is that the Tenant did not pay rent to the Landlord in August and September 2021, and for 13 days in November 2021. I find that the Tenant has provided insufficient evidence that the Landlord agreed that the Tenant did not have to pay rent for these dates.

I find that the Tenant owes the Landlord **\$3,800.00** for August and September 2021. I find that the \$1,900.00 rent amounts to \$63.33 per day. I find that the Tenant vacated the rental unit on November 12, 2021, and therefore, that he owes the Landlord **\$759.96** for November 2021. Accordingly, the Landlord is awarded a total amount of **\$4,559.96** from the Tenant.

#### Summary and Offset

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's \$950.00 security deposit in partial satisfaction of the Landlord's monetary awards. As such, I authorize the Landlord to retain the Tenant's **\$950.00** security deposit, pursuant to section 72 of the Act.

Given his lack of success in this Application, I decline to award the Tenant with recovery of the \$100.00 Application filing fee.

<u><b>Tenant's claims:</b></u>	<u><b>Award</b></u>
AirBnB Stay.....	\$0.00
Rent reduction.....	\$0.00
Emergency repairs.....	\$0.00
 <u><b>Landlord's claims:</b></u>	
Recovery of unpaid rent.....	\$ 4,559.96
Less security deposit.....	(\$ 950.00)
<b>Total .....</b>	<b><u>\$ 3,609.96</u></b>

Based on the evidence before me, overall, I grant the Landlord a **Monetary Order** of **\$3,609.96** from the Tenants, pursuant to sections 26, 55 (1.1), and 67 of the Act.

### Conclusion

The Tenants are unsuccessful in their Application, as they failed to provide sufficient evidence to prove their claims on a balance of probabilities. Their Application is dismissed wholly without leave to reapply, pursuant to section 62 of the Act.

The Landlord is successful in his claim pursuant to section 55 (1.1) of the Act for the recovery of unpaid rent, further to the dismissal of the Tenant's claim to cancel the 10 Day Notice. The Landlord is awarded recovery of **\$4,559.96** from the Tenant. The Landlord is authorized to retain the Tenant's **\$950.00** security deposit in partial satisfaction of this award.

The Landlord is granted a **Monetary Order** under section 67 of the Act from the Tenant in the amount of **\$3,906.96**. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 26, 2022

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Residential Tenancy Branch