



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, MNRL-S, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act (the “Act”), for a monetary order for monetary loss or other money owed, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. All parties confirmed under affirmation that they were not recording this hearing in compliance with the Residential Tenancy Branch Rules of Procedure 6.11.

The tenant’s confirmed they received the landlord’s evidence. The tenants confirmed they did not serve their evidence on the landlords. Therefore, as the landlords were not served with the tenants’ evidence, I have excluded that evidence from the hearing

### Preliminary and Procedural matters

In this case, the landlord NX amended their application to include SH as a landlord. SH was the purchaser who requested vacant possession of the premises and a notice to end tenancy under section 49 of the Act was issued on January 28, 2021, with an effective vacancy date of April 1, 2021.

On April 19, 2021 the landlord NX and the tenants were at a hearing. The tenants filed an application to cancel a One Month Notice to End Tenancy for Cause, issued on January 10, 2021 and a separate application to cancel the Two Month Notice to End Tenancy for Landlord’s use of Property which was previously mentioned. The landlord

had filed an application for an order of possession. I have noted the file numbers on the covering page of this decision.

At the hearing the Arbitrator determined that the One Month Notice to End Tenancy for Cause was valid and found the tenancy ended under section 47 of the Act; not under section 49 of the Act, and an order of possession was granted to the landlord NX.

On April 22, 2021, the tenants acknowledged they were served with the order of possession and filed an application for review consideration. On May 3, 2021 their application was dismissed, and the Decision and Order of April 19, 2021 were confirmed.

In this case, I find it appropriate to remove the purchaser SH from the style of cause, as SH did not suffer a loss. NX was exercising their right to end the tenancy in accordance with the Act and their obligations under the contract of the sale of the property. Although SH did take ownership at some point; however, NX was the landlord of the tenants as show in the tenancy agreement and as defined in the Act as this includes the former landlord. NX was enforcing the order possession which they were entitled to receive, and this application is made based on the monetary loss NX suffered due to the tenants' breach.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

#### Issues to be Decided

Is the landlord entitled to monetary compensation for monetary loss or other money owed?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

#### Background and Evidence

The tenancy began on October 1, 2019. Rent in the amount of \$1,600.00 was payable on the first of each month. The tenants paid a security deposit of \$800.00. This amount was reduced to \$700.00 by the Arbitrator at the previous hearing, as the landlord was entitled to deduct \$100.00 from the security deposit to recover the cost of the filing fee. The tenancy ended on May 5, 2021, when the bailiff enforced a Writ of Possession issued by the Supreme Court.

The landlord testified that the tenants did not vacate in accordance with the order of possession, and their application for review consideration was dismissed. The landlord stated that they had the order of possession enforced by the Supreme Court and a Writ of Possession was granted on May 4, 2021.

The landlord testified that on May 5, 2021 the bailiffs attended the premises to remove the tenants and they had to pay the bailiffs fees of \$5,322.62, the court fee of \$120.00 and \$145.72 to have the locks changed. Filed in evidence is a copy of the original order of possession issued by the Residential Tenancy Branch on April 19, 2021, a copy of the Supreme Court filing fee receipt, a copy of the Bailiff invoice and the invoice to change the locks.

The landlord testified that they should be entitled to prorated rent from May 1 to May 5, 2021 in the amount of \$263.00.

The tenants testified that they knew their application for review consider was dismissed on May 3, 2021 as they had received that information from the Residential Tenancy Branch; however, they were waiting to receive a copy of the decision. The tenants stated would have complied with the order of possession or took other actions once they received a copy of the review application decision; however, the bailiffs and the police were at the property on May 5, 2021 and they were removed.

The tenants testified that they paid the full rent to the purchaser SH; however, it was returned and left outside their rental unit and they left it there.

The landlord argued that the rent was returned to the tenants because they had served the tenants with the order of possession and were not reinstating the tenancy and they would have only been entitled to a prorated rent.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, the landlord received an order of possession on April 19, 2021, the tenants filed an application for review consideration which was dismissed on May 3, 2021 and the original decision and order were confirmed.

On May 4, 2021 the Supreme Court issued a Writ of Possession, which was enforced by the bailiffs on May 5, 2021. The landlord paid a court filing fee, bailiff fees and the cost to change the lock, as a result the landlord suffered a loss.

While I accept the tenants may not have had any advance notice that the bailiffs would attend; however, that is not uncommon. I have no authority to question an Order of the Supreme Court or how or when that Order is enforced.

As the landlord paid the amount of \$120.00 for court costs, \$5,322.62 for bailiff fees and \$145.72 to change the locks, I find the landlord suffered a loss due to the tenant's breach of the Act when they failed to vacate the premises. I find the landlord is entitled to recover the amount of **\$5,588.34**.

In this case, the tenant had attempted to pay rent for May 2021; however, it was returned to the tenants. The tenants were clearly aware that it was left outside their door for retrieval as the landlord was not accepting rent for May 2021 as they were in the process of having the tenants removed and would only be entitled to the amount to which the tenants overheld the premises. I do not find it reasonable or logical that the tenants would not open their door and retrieve the money as this was for their sole benefit. I do not accept the evidence of the tenants that they simply left it there. I find the tenants are required to pay the prorated rent for the duration of May 1 to May 5, 2021 in the amount of **\$263.00**.

I find that the landlord has established a total monetary claim of **\$5,951.34** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$700.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$5,251.34**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

### Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 13, 2022

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Residential Tenancy Branch