



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR, MNRL, MNDL, MNDCL

### Introduction

On September 2, 2021, the Landlord made an Application for a Direct Request Proceeding seeking an Order of Possession for Unpaid Rent based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

A Decision was made on October 15, 2021 and then a subsequent Review Consideration Decision was made on October 27, 2021. Pursuant to that Review Consideration Decision, a Review Hearing was subsequently scheduled to commence via teleconference at 9:30 AM on March 10, 2022.

On February 15, 2022, the Landlord amended her Application seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

The Landlord attended the Review Hearing; however, neither Tenants attended at any point during the 36-minute teleconference. At the outset of the hearing, I advised the Landlord that recording of the hearing was prohibited. She was reminded to refrain from doing so and she acknowledged this term. As well, she provided a solemn affirmation.

She advised that she served the Notice of Hearing package to the Tenants by registered mail on October 28, 2021 (the registered mail tracking number is noted on the first page of this Decision). She stated that she served it to this address because this is the address she received from the Tenants by text on September 22, 2021. She stated that this was not returned to sender, so the Tenants did receive this package. Based on this undisputed, solemnly affirmed testimony, I am satisfied that the Tenants

were deemed to have received the Notice of Hearing package five days after it was mailed.

She then advised that she served the Tenants her Amendment and evidence package by hand, via a process server, on February 22, 2022. Proof of service of this was included as documentary evidence. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on April 1, 2016 and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on September 30, 2021. Rent was established at an amount of \$1,000.00 per month and was due on the first day of each month. A security deposit of \$500.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence. Given that the Tenants had already moved out of the rental unit, the Landlord's original request for an Order of Possession is not necessary to consider.

She testified that a move-in inspection report was conducted on March 28, 2016 and that a notification for a move-out inspection report was posted on the Tenants' door approximately a week before September 30, 2021. As the Tenants did not attend, she

conducted this report in their absence. A copy of the condition inspection reports was submitted as documentary evidence.

With respect to the matter of rent outstanding, she testified that the Notice was served to the Tenants by hand on August 27, 2021. A proof of service form was submitted to corroborate service of the Notice. The Notice indicated that \$1,000.00 was owing for rent on August 1, 2021. The effective end date of the tenancy was noted as September 6, 2021. She submitted that the Tenants did not pay any rent for August or September 2021. Thus, she is seeking a Monetary Order in the amount **\$2,000.00**

As well, she advised that she is seeking compensation in the amount of **\$545.15** because the Tenants were required to return the heating fuel to the same level it was provided to them at, as per the tenancy agreement. She stated that a new furnace was installed on October 23, 2020 and the propane was full at that time. However, at the end of the tenancy, this was the cost to return the tank to full capacity. She submitted an invoice as documentary evidence to support this claim.

She advised that she is seeking compensation in the amount of **\$321.97** because the Tenants failed to clean, and they left the rental unit filthy at the end of the tenancy. She referenced pictures submitted to corroborate this state, as well as an invoice of the cleaning company hired to return the rental unit to a re-rentable condition.

She advised that she is seeking compensation in the amount of **\$9500.00** because the Tenants rented a bobcat and cleared the Landlord's property without her consent. She referenced pictures submitted as documentary evidence demonstrating that the Tenants removed soil and took down trees, which damaged the property and the septic system. She referenced an appraisal submitted as the cost to restore the property to the original condition at the start of the tenancy.

She advised that she is seeking compensation in the amount of **\$241.92** because the Tenants ripped, bent, and lost window screens, and because they broke a screen door and window. She referenced the invoice submitted to support the cost of this repair.

She advised that she is seeking compensation in the amount of **\$268.00** because the Tenants did not leave the keys to the rental unit behind. As such, she was required to call a locksmith and have the locks changed. She referenced the invoice submitted to support the cost of this repair.

She advised that she is seeking compensation in the amounts of **\$23.25** and **\$13.50** because the Tenants were responsible for water utilities per the tenancy agreement, and these were the charges for their water consumption over the municipality limit. She referenced the invoices submitted to support the cost of these utilities.

She advised that she is seeking compensation in the amount of **\$64.99** because the Tenants broke the patio door latch, and she was required to replace this. She referenced the invoice submitted to support the cost of this repair.

Finally, she advised that she is seeking compensation in the amount of **\$344.21** because she needed to repair the broken lights, the broken closet, the broken bi-fold door, and other items damaged by the Tenants. She referenced the invoice submitted to support the cost of this repair.

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlord must offer at least two opportunities for the Tenants to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulations* (the "*Regulations*") outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenants have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit or pet deposit for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenants must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

As the consistent and undisputed evidence is that a move-in inspection report was conducted with the Tenants and that a move-out inspection report could not be conducted with the Tenants as they did not attend the move-out inspection, I am satisfied that the Landlord completed these reports in accordance with the *Act*. As such, I find that the Landlord has not extinguished the right to claim against the deposit.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, 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. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenants fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

With respect to the Landlord's claim for compensation in the amount of \$2,000.00 for August and September 2021 rent, as the undisputed evidence is that the Tenants did not pay rent for these months and gave up vacant possession of the rental unit on September 30, 2021, I grant the Landlord a monetary award in the amount of **\$2,000.00** to satisfy this claim. Furthermore, as the Landlord originally made this Application on September 2, 2021 while the tenancy was still in effect, I would have permitted the Landlord to apply the security deposit towards this debt. As such, under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction towards the rental arrears.

Regarding the Landlord's other claims for compensation, I am satisfied from the undisputed evidence that the Tenants were negligent for the damages claimed by the Landlord. In addition, I find that the Landlord has substantiated these claims with sufficient documentary evidence. As such, I grant the Landlord a monetary award as outlined below.

As the Landlord was successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Tenants to the Landlord**

Item	Amount
August 2021 rent	\$1,000.00
September 2021 rent	\$1,000.00
Propane	\$545.15
Cleaning	\$321.97
Landscape restoration	\$9,500.00
Window screen repair	\$241.92
Door lock replacement	\$268.00
Water utility overage	\$36.75
Patio door handle latch	\$64.99
Various repairs	\$344.21
Recovery of Filing Fee	\$100.00
Security deposit	-\$500.00

<b>Total Monetary Award</b>	<b>\$12,922.99</b>
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Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$12,922.99** in the above terms, and 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: March 22, 2022

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Residential Tenancy Branch