



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL, MNRL, MNDL, FFL

### Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- Monetary orders pursuant to s. 67 with respect to the following:
  - Compensation for monetary loss or money owed;
  - Recovery of money for unpaid rent; and
  - Compensation for damage caused by the Tenant, their pets, or guests; and
- Return of their filing fee pursuant to s. 72.

B.L. appeared as Landlord. She was represented by her agent and property manager R.L.. The Tenants did not appear, nor did someone appear on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenants did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

I was advised by the Landlord’s agent that the Notice of Dispute Resolution was served to the Tenants by way of email sent on November 7, 2021. The Landlord’s agent further advised that email is an approved form of service and that the Tenants have signed form RTB-51 providing their emails for service. I find that the Notice of Dispute Resolution was served in accordance with s. 89 of the *Act* as the regulations permit service by way of email when the parties agree to it beforehand, such as occurred here, This finding is based on R.L.’s undisputed testimony. Pursuant to s. 44 of the

Regulations, I deem that the Tenants received the Notice of Dispute Resolution on November 10, 2021.

R.L. advised that the Landlord served the Tenants with their evidence on March 4, 2022. At the hearing, I questioned the Landlord's agent why the evidence was not served at least 14-days before the hearing as required by Rule 3.14 of the Rules of Procedure. I further queried whether the evidence was new or relevant, as contemplated by Rule 3.17. The Landlord's agent was unable to explain why the evidence was served late and appeared to have a misapprehension of the relevant timelines with respect to service of their evidence. Further, it was admitted that the evidence was not new within the meaning of Rule 3.17.

As the Landlord failed to serve their evidence in compliance with the Rules of Procedure, it is not admitted into the record as this would be unduly prejudicial to the Tenants right to respond.

#### Issue(s) to be Decided

- 1) Is the Landlord entitled to compensation for unpaid rent?
- 2) Is the Landlord entitled to compensation for monetary loss?
- 3) Is the Landlord entitled to compensation for damages caused by the Tenants?
- 4) Is the Landlord entitled to the return of their filing fee?

#### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Landlord's agent advised me with respect to the following details of the tenancy:

- The tenancy began on October 1, 2021 and was for a fixed one-year term ending on September 30, 2022.
- Rent of \$5,495 was due on the first day of each month.
- Utilities were to be paid in the fixed amount of \$350.00 per month.
- A security deposit was to be paid pursuant to the agreement, but the Tenants payments had bounced.

The Landlord indicated that she arranged to rent the residential property, in which she previously resided, while she visited overseas.

The Landlord's agent indicates that the Tenants took occupancy on October 1, 2021. On October 29, 2021, the Landlord's agent says she received an email from the Tenants indicated that they would be vacating the residential property immediately as they felt it was not suitable for winter living. I was advised that the residential property had heating throughout.

The Landlord's agent indicates that the Tenants had not provided a forwarding address when they vacated the property on October 29, 2021.

The Landlord's agent indicates that she took possession of the residential property shortly after October 29, 2021 and listed it for rental on November 1, 2021. I was told that there was limited interest in the property given its size and the fact that the house was furnished. There were showings and in December 2021 a family had shown interest in renting the property beginning on February 1, 2022. However, this prospective tenant did not sign a tenancy agreement nor take up occupancy of the property.

The Landlord advised that the disruptions caused by the Tenants abrupt departure prompted her to return from overseas. She moved back into the residential property in February 2022.

The Landlord's agent indicated that the Tenants had failed to pay rent in October 2021. The Landlord is seeking rent for October and compensation for lost rent for the months of November 2021, December 2021, and January 2022. The Landlord also seeks compensation for the utility payments for those months as well.

The Landlord indicates that the property was re-keyed and that this was done given the manner in which the tenancy ended. The Landlord's agent indicates that the cost of re-keying the house was \$231.78, which was paid on February 28, 2022. The Landlord seeks for this to be compensated by the Tenants.

Finally, the Landlord says that a series of three surveillance cameras were destroyed by the Tenants. The Landlord indicates that they were removed and would cost \$600.00 to replace. The Landlord seeks compensation in this amount. However, the Landlord's agent indicated that the cameras had not been replaced, that they had received no

quote for the work, and that the amount was based on a cost estimate of \$200.00 per camera destroyed.

### Analysis

The Landlord seeks compensation from the Tenants arguing that they broke a fixed-term tenancy.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

I accept the undisputed testimony of the Landlord that there was a tenancy starting on October 1, 2021 ending on September 30, 2022. I further accept that rent was due in the amount of \$5,495.00 and that utilities were due in the fixed amount of \$350.00, both to be paid monthly. I further accept that the tenancy ended on October 29, 2021 when the Tenants vacated the rental unit.

Dealing first with the aspect of unpaid rent for the month of October 2021, I find that the Tenants failed to pay rent pursuant to the tenancy agreement and breached their obligations under s. 26 of the *Act*. I accept this resulted in a loss to the Landlord in the amount of rent to be paid for that month. I find that the Landlord could not have mitigated their damages with respect to the unpaid rent for the month of October 2021 as the Tenants vacated the rental unit on October 29, 2021. I find that the Landlord has established their claim for unpaid rent in the amount of \$5,495.00 for the month of October 2021.

Looking at the damage claims for money lost, I find that the Tenants broke the one-year fixed-term tenancy by vacating the rental unit early on October 29, 2021. I accept the Landlord's undisputed testimony that there was no basis for the early end of the fixed term.

Policy Guideline #3 provides the following guidance with respect to claims for rent after the early end to a tenancy:

Where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement (section 7(1) of the *RTA* and the *MHPTA*). This can include the unpaid rent to the date the tenancy agreement ended and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement.

I find that the Tenants breached tenancy agreement, which was set to end on September 30, 2022, and that this caused the Landlord losses with respect to unpaid rent and utilities.

The Landlord has a duty to mitigate their losses. I find that the Landlord acted reasonably by re-listing the property for rental on November 1, 2021. I accept the Landlord's undisputed testimony that the property had limited interest given its size and the fact it was furnished. The Landlord further acted reasonably by moving back to the residential property in February 2022 after the prospective family did not end up renting the property in that month.

I find that the Landlord has established a claim for compensation for unpaid rent for the months of November 2021, December 2021, and January 2022 in the total amount of \$16,485.00 (\$5,495 x 3). I further find that the Tenants breach in the tenancy agreement resulted in the loss of the utility payments, that were not paid for the months of October 2021, November 2021, December 2021, and January 2022 in the total amount of \$1,400.00 (\$350.00 x 4).

With respect to the Landlord's claim for compensation related to the re-keying of the property, I note that Policy Guideline #7 indicates that the Landlord is responsible for re-keying locks when a new tenant takes occupancy of the rental unit, which is similarly listed as the Landlord's obligation in Policy Guideline #1. As re-keying a lock is the Landlord's responsibility at the end of the tenancy, I find that the Tenants did not breach

their obligations under the *Act*, Regulations, or the tenancy agreement with respect to this expense. The cost of re-keying contemplated under normal circumstances to be borne by the Landlord. Therefore, this portion of the Landlord's claim is dismissed without leave to reapply.

Finally, I find that the Landlord has failed to establish their claim for damages with respect to the destroyed surveillance cameras. Though I accept the Landlord's undisputed testimony that the Tenants had caused the damage, the Landlord is also under an obligation to quantify their claim under the four-part test to s. 67. They have not paid the cost of repairing the cameras and the amount listed is based on a best guess. Given this and the lack of documentary evidence on this point, I dismiss the Landlord's claim for compensation for the destroyed cameras without leave to reapply.

Taking the above into account, I find that the Landlord has established a total monetary claim as follows:

Item	Amount
Unpaid rent for October 2021	\$5,495.00
Compensation for unpaid rent due to the early end to tenancy (November 1, 2021 to January 31, 2022)	\$16,485.00
Compensation for unpaid utilities (October 1, 2021 to January 31, 2022)	\$1,400.00
<b>TOTAL</b>	<b>\$23,380.00</b>

As the Landlord was largely successful in their application, I order that the Tenants pay the Landlord's filing fee of \$100.00 pursuant to s. 72(1) of the *Act*. This amount is to be added to the total amount listed above.

### Conclusion

I find that the Landlord has established a monetary claim following the Tenants early end to the tenancy. Taking the total claims into account, I find that the total monetary claim is in the amount of \$23,380.00.

I further order pursuant to s. 72(1) that the Tenant's pay the Landlord's filing fee of \$100.00 as the Landlord was largely successful in their application.

Adding the amounts listed above, I order pursuant to s. 67 that the Tenants pay **\$23,480.00** to the Landlord.

It is the Landlord's obligation to serve the monetary order on the Tenants. If the Tenants do not comply with the monetary order, it may be filed by the Landlord with 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 11, 2022

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Residential Tenancy Branch