



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR-MT, RR, OLC, MNDCT, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated August 6, 2021; for more time to apply to cancel the 10 Day Notice; for an Order to reduce the rent for repairs, services or facilities agreed upon, but not provided; for an Order for the Landlord to Comply with the Act or tenancy agreement; for a Monetary Order of \$1,952.90 for damage or compensation under the Act; and to recover the \$100.00 cost of their Application filing fee.

However, in the first teleconference hearing, the Tenant said that they moved out, therefore, they seek only the monetary claims applied for in this proceeding.

At the first hearing, the Tenant, J.S., and an agent for the Landlord, Z.C. ("Agent"), appeared at the teleconference hearing. In this first hearing, the Tenant said that they had lost their evidence in a computer malfunction, and he requested an adjournment, and requested that the RTB send him a copy of the Tenants' evidence. The RTB tried to email copies of their evidence to the Tenants; however, I was advised that our email bounced back as undeliverable. I advised the Tenants that they would have to reconstruct their evidence while waiting for the reconvened hearing.

Only the Tenant, J.S., attended the reconvened hearing. The teleconference phone line remained open for over ten minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant.

I explained the hearing process to the Tenant and gave him an opportunity to ask

questions about it. During the reconvened hearing, the Tenant was given the opportunity to provide his evidence orally and to respond to my questions. 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 that after the adjournment, they served the Landlord with their Application, the Notice of Hearing documents, and as much evidence as they had, in addition to their amendments by email to the Landlord’s Agent on January 2, 2022. The Agent did not attend the reconvened hearing to confirm or dispute this. Based on the evidence before me in this matter, I find that the Landlord was served with the Notice of Hearing documents and evidence pursuant to the Act.

### Preliminary and Procedural Matters

The Tenants provided the Parties’ email addresses in the Application, and they confirmed these addresses in the hearing; the Agent provided a different email address for receiving 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 reconvened hearing, I advised the Tenant that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which he pointed or directed me in the hearing. I also advised the Tenant that he is not allowed to record the hearing, and that anyone who was recording it was required to stop immediately.

During the first hearing, the Parties indicated that the Landlord had been improperly identified as the building manager. The Parties confirmed that the Landlord for this tenancy is a corporation owned by [P.W.] As I find that the style of cause in the Application must be corrected, I amended the Respondent’s name in the Application in this regard, pursuant to section 64 (3) (c) and Rule 4.2.

### Issue(s) to be Decided

- Are the Tenants 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 Tenant confirmed that the periodic tenancy began on June 1, 2013, with a monthly

rent of \$1,360.00, due on the first day of each month. The Tenant said that they paid the Landlord a security deposit of \$600.00, and a \$200.00 pet damage deposit. The Tenant said that they had bought a condominium, and therefore, they moved out of the residential property on August 21, 2021.

In an amendment to the original Application, the Tenants applied for compensation for their monetary loss or other money owing of \$1,952.90 ("Amendment").

In their Amendment, the Tenants described their claim, as follows:

[I.L.], on behalf of [the Landlord], agreed and confirmed in writing to prorate my rent for vacating early and refund \$492.90. I was never paid this. I tried my best to solve the issue and avoid this complaint, but the landlord refused to communicate with me. For this reason, I am also claiming the \$100.00 dispute fee as well as \$560.00 lost wages for the hearing date. I am an independent contractor – If I miss work, I don't get paid. Additionally, I have included \$800.00 for loss of enjoyment for the lack of repairs requested, making the apartment unsafe, unsanitary, and unenjoyable

The Tenants submitted a monetary order worksheet for these claims, and we reviewed them consecutively, as below.

#### **#1 RENTAL REFUND → \$492.90**

The Tenants submitted an email they received from [I.L.], the property management assistant, in which she said the following;

Good afternoon [H],

I have spoken with my upper management regarding your situation with your unit. We have agreed to write off the \$20 late fee that you were required to pay as well as allow you to pay the pro-rated rent of \$492.90 on top of the \$560.00 that you have paid previously, that is if you move out by 1pm today, August 25<sup>th</sup>, 2021. Should you wish to vacate the unit by 1pm tomorrow instead, you are required to pay an additional day of rent. You must return all keys and complete a move out inspection with the building manager, [Z.] and agree to pay all applicable fees associated during the move out inspection (move out fees will be taken out from your security deposit). Please note that we do not do this normally and negate fees for tenants but we are willing to reach this level for you. Thank

you for being a tenant at [H.].

Kind Regards,

[I.L.]  
Property Management Assistant

The Tenants responded to this email, as follows:

Thanks [I.] – I appreciated it!  
Just got this. I am out already. As I am out already, I assume I will not be charged til tomorrow? If I don't hear from you today, I will wait prior to issuing a cheque in order to get the correct amount. I am back from travelling this Sunday. What move out fees? I haven't been informed about any and they were not in my agreement.

I cannot be there for inspection as I'm travelling but have taken pictures. There is some damage to the bathroom cupboard under the vanity; however, I had requested replacement years ago as it is separating from the wall, very old and in generally poor condition due to wear and tear. I expect I will not be penalized for this, as replacement would have been required in any case.

Thank you again for your help!

## **#2     LOST WAGES → \$560.00**

I would argue that those are the more discretionary head of damages. I operate on a billable hours of \$450.00 and I've invested a lot of time, including two hearings in this, and that the Landlord acted in bad faith. In any event, I would rather invest my time in helping people to move to Canada.

## **#3     LOSS OF QUIET ENJOYMENT → \$800.00**

In the reconvened hearing, the Tenant said the following about this claim:

It was again, discretionary; I don't want to fluff arguments, but the reality is it caused stress between my wife and I. It was stressful when we were moving out, it was anxious - anxiety to bump into them - putting down my wife. The Landlord said a number of things that were exceptionally rude. We applied for that for our submissions.

The Tenant also said that the loss of quiet enjoyment related to the Landlord's failure to repair things in the rental unit, such as the bathroom cupboard under the vanity. The Tenant said: "I had requested repair of the rotting bathroom door in March 2020 and it was never done." Further, the Tenant said that their food rotted when the freezer failed, and their claim covers this, as well.

The Tenants also submitted evidence stating that the Agent repeatedly entered the rental unit without first having given proper notice. They said this amounted to trespassing, and it was in addition to her rude behaviour toward the Tenants. The Tenants gave an example of having left the window dressings folded under the window, for the planned painting of the unit. However, upon looking into the unit from outside after returning the keys earlier, the Tenant noticed that the window dressings had been moved, which indicated that someone had been in the rental unit without having first given notice to do so to the Tenants.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Tenant testified, I let him know how I would be analyzing the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline #16 ("PG #16") sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Tenants must prove:

1. That the Landlord violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Tenants to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Tenants did what was reasonable to minimize the damage or loss.

("Test")

### **#1 RENTAL REFUND → \$492.90**

Based on the evidence before me, overall, I find that the Landlord agreed to pro-rate the Tenants' last month of the tenancy, as they vacated the rental unit prior to the end of the month. However, I find the Parties' calculations in this regard are difficult to understand.

The Tenant confirmed that they pay \$1,360.00 a month in rent, and there are 31 days in August. I find the amount owing is as follows:

$\$1,360.00 / 31 \text{ days} = \$43.87/\text{day}$

$\$43.87/\text{day} \times 21 \text{ days} = \$921.27$  to be paid by the Tenants

$\$1,360.00 - \$921.27 = \mathbf{\$438.73}$  to be reimbursed by Landlord

Accordingly, without further calculations before me, I award the Tenants with **\$438.73** from the Landlord, pursuant to sections 62 and 67 of the Act.

## **#2 LOST WAGES → \$560.00**

I recognize that the amount claimed is approximately an hour and a quarter of the Tenant's billable hourly rate, and that the Tenant worked more hours than this on the Application; however, the Tenant did not set out the hours worked on their Application, nor did they provide an authority under the Act for granting recovery of missed wages. Accordingly, I find that the Tenants did not provide sufficient evidence or authorities for me to grant this claim. As such, I dismiss this claim without leave to reapply, pursuant to section 62 of the Act.

## **#3 LOSS OF QUIET ENJOYMENT → \$800.00**

As noted in the Test above, the Tenants are required to provide proof that the Landlord breached the tenancy agreement or the Act, and that this breach caused the Tenants to incur loss or damage, as a result. The Tenant's evidence in this matter amounts to the Landlord being rude to the Tenants, which made their remaining time there uncomfortable, and repair of a bathroom cabinet.

Step three of the Test requires an applicant to explain how they calculated the amount claimed. I find that the Tenants did not direct me to any evidence of how they calculated the \$800.00 claimed in this matter. However, I find that the Tenants have provided evidence to support their claim that the Agent entered their suite without sufficient notice of this in advance. Further, I note from the Tenants' email communication with the Landlord, that repairs had been requested, but not completed by the Landlord. In addition, the undisputed evidence before me is that the Agent was repeatedly rude to the Tenants, which contributed to their unpleasant surroundings.

I find the Tenants provided sufficient evidence to prove this claim on a balance of probabilities, but that they did not explain the calculation of this claim. However, Policy

Guideline #16, "Compensation for Damage or Loss", states that

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

Based on the evidence before me overall in this matter, and pursuant to PG #16, and sections 7, 32. 28 and 67 of the Act, I award the Tenants with a nominal amount of **\$200.00** for loss of quiet enjoyment of the residential property. This award reflects the behaviour of the Agent, and the Landlord's failure to repair the residential property, as needed.

### Summary

I have awarded the Tenants with recovery of

\$438.73 – rental refund

\$200.00 – loss of quiet enjoyment of rental unit

\$638.73 – Total award

Given their relative success in their Application, I also award the Tenants with recovery of their \$100.00 Application filing fee, pursuant to section 72 of the Act, for a total award of **\$738.73** from the Landlord.

I grant the Tenants with a **Monetary Order** of **\$738.73** from the Landlord pursuant to section 67 of the Act.

### Conclusion

The Tenants are predominantly successful in their Application, as they provided sufficient evidence to prove most of their claims on a balance of probabilities, including eligibility for recovery of the \$100.00 Application filing fee.

I grant the Tenants a **Monetary Order** under section 67 of the Act from the Landlord of **\$738.73**. This Order must be served on the Landlords by the Tenants 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: April 13, 2022

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Residential Tenancy Branch