



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Onni Group  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **PSF, OLC, FFT, MNDCT**

### **Introduction**

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for compensation for a monetary loss or other money owed pursuant to Sections 62 and 67 of the Act;
2. An Order for the Landlord to provide services or facilities required by the tenancy agreement or law pursuant to Section 62(3) of the Act;
3. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Director, JS, Property Manager, GH, and the Tenants, BY and SW, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Tenants confirmed that they personally served the Landlord with the Notice of Dispute Resolution Proceeding package, first evidence package on a usb stick for this hearing and Amendment on February 17, 2022 (the "NoDRP package"). The Property Manager confirmed receipt of the NoDRP package and confirmed that they were able to access the evidence on the usb stick. I find that the Landlord was served with the

NoDRP package for this hearing on February 17, 2022, in accordance with Sections 88 and 89 of the Act.

The Tenants testified that they served the Landlord with a second evidence package on April 21, 2022 by FedEx delivery. The Tenant referred me to the FedEx tracking number as proof of service. I noted the FedEx tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the second evidence package. While FedEx is not an accepted method of service under the Act, I find the Landlord's confirmation of receipt of the second evidence package indicates they were sufficiently served in accordance with Section 71(2)(c) of the Act.

### Issues to be Decided

1. Are the Tenants entitled to an Order for compensation for a monetary loss or other money owed?
2. Are the Tenants entitled to an Order for the Landlord to provide services or facilities required by the tenancy agreement or law?
3. Are the Tenants entitled to an Order for the Landlord to comply with the Act, regulations, and tenancy agreement?
4. Are the Tenants entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on December 1, 2021. The fixed term ends on November 30, 2023. Monthly rent is \$2,385.00 payable on the first day of each month. A security deposit of \$1,192.50 and a pet damage deposit of \$1,192.50 were collected at the start of the tenancy and are still held by the Landlord.

The tenancy agreement contained the below additional term:

#### *Tenancy Agreement Additional Terms*

*Section 25. The Tenant acknowledges that the Premises are under construction or may be newly constructed. The Tenant acknowledges and*

*agrees that the start date of the term of the tenancy is an estimated only and is conditional on the [city] granting to the Landlord an occupancy permit for the premises. When the Landlord has received the occupancy permit, the Tenant will be given two week's notice of the start date of the term of the tenancy, at which time the term of the tenancy will commence, and the Tenant will be responsible for payment of rent and all other obligations under the Tenancy Agreement. The Tenant acknowledges and agrees that the Landlord shall not be responsible for any delay in the commencement of the term of the tenancy and shall not be responsible for, nor reimburse the Tenant for, any costs incurred by the Tenant in respect of or resulting from such delayed commencement. (emphasis mine)*

The Tenants are claiming monetary losses including compensation for stress and mental anguish. The Tenants' monetary worksheet claims are as follows:

|                          |                              |             |
|--------------------------|------------------------------|-------------|
| Shoppers Drug Mart       | PO Box Rental                | \$119.70    |
| [Name of hotel]          | Accommodations-Oct 29-Nov 27 | \$5,034.78  |
| Credit card statement    | Balance protection fees      | \$72.78     |
| Line of credit (Nov)     | Interest charges             | \$14.92     |
| Line of credit (Dec)     | Interest charges             | \$20.87     |
| Video converter          | Convert upload files         | \$28.59     |
| Notice of rent increase  | Show rent at [building name] | -\$1,038.51 |
| Request for compensation | Stress, mental anguish       | \$2,385.00  |
| RTB                      | application filing fee       | \$100.00    |

On September 25, the Landlord advised the Tenants that all things were a go for a move-in into the new building on November 1, 2021, and that they could give notice to their previous landlord. The Tenants gave end of tenancy notice on September 27, 2021 to their previous landlord for an end of tenancy date of October 31, 2021. The Landlord had not formally obtained their occupancy permit from the city when they notified the Tenants to give their notice to their previous landlord. On September 29, 2021, the Tenants received a telephone call from an agent of the Landlord that there was an issue with a water leak in an elevator which was going to impact the November 1, 2021 move-in date. The Tenants were not able to retract their end of tenancy notice at their former residence, so they incurred hotel costs from October 29, 2021 to November 27, 2021.

The Tenants required a mailing address at the end of October because they were not able to receive mail at the new building, so they purchased a Canada Post PO Box rental. The shortest period allowed to rent a Canada Post PO Box was for three months.

On October 15, 2021, the Landlord assured the Tenants of storage of their furniture in the rental unit which would alleviate the Tenants having to move their furniture twice. The Tenants were first told that October 29, 2021 would be the day that they could move their furniture and belongings into the rental unit for storage. This date was changed due to problems the Landlord was having. The Tenants moved their furniture into the rental unit on October 30, 2021. The Tenants were negatively impacted by the moving date for move-in of their furniture as they had to make alternative date plans with the moving company who had the contract of moving the Tenants' furniture and other belongings. The Tenants testified that the Landlords were not always communicative about the move-in date plans, and the Tenants spent time trying to firm up dates with the Landlord.

The Tenants waited for a confirmed date where the Landlord had received their occupancy permit and the Tenants could move in. On November 23, 2021, the Tenants were advised that the building had received its occupancy permit. The Tenants were eventually able to move into the rental unit on November 27, 2021.

The Tenants are claiming the expense to purchase balance protection insurance on their credit card. The Tenants subsequently moved the credit card charges to their line of credit, and are also claiming interest charges incurred on their line of credit account for the months of November and December 2021.

The Tenants are claiming the expense of purchasing a one-month licence video converter program which allowed them to reduce the file size of digital evidence uploaded onto the RTB website.

The Tenants stated they deducted how much they would have paid in rent at their previous residence as they said this was an expense they would have incurred if not told to give notice to their previous landlord.

The Tenants are claiming \$2,385.00 for the inconvenience, stress and anguish they experienced in this housing transition.

The Landlord agrees to reimburse the Tenants for the Shoppers Drug Mart PO Box rental, accommodations from October 29-November 27, 2021, the credit card balance protection fees and the November interest charges from the Tenants' line of credit.

The Landlord wrote the Tenants stating: "... *The reimbursements are contingent on your [Building name] lease; if you had canceled your [Building name] leases and kept your other rental units instead, there would not be additional costs to reimburse. That is why we have deducted your [Building name] rental amounts below.*"

### Analysis – Settlement

Pursuant to Section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of a portion of their dispute

Both parties agreed to the following final and binding settlement of some issues currently under dispute at this time:

|                        |                              |                   |
|------------------------|------------------------------|-------------------|
| Shoppers Drug Mart     | PO Box Rental                | \$119.70          |
| [Name of hotel]        | Accommodations-Oct 29-Nov 27 | \$5,034.78        |
| Credit card statement  | Balance protection fees      | \$72.78           |
| Line of credit (Nov)   | Interest charges             | <u>\$14.92</u>    |
| Total Settlement Award |                              | <u>\$5,242.18</u> |

### Analysis – Monetary Award

While the parties were able to agree to the above figure of \$5,242.18, they were unable to resolve the portion of the Tenants' claim related to the following:

|                          |                              |             |
|--------------------------|------------------------------|-------------|
| Line of credit (Dec)     | Interest charges             | \$20.87     |
| Video converter          | Convert upload files         | \$28.59     |
| Notice of rent increase  | Show rent at [building name] | -\$1,038.51 |
| Request for compensation | Stress, mental anguish       | \$2,385.00  |

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This case deals with the events leading up to the Tenants' move-in into a newly built residential property. The Tenants wanted to move into this residential property; hence, the reason they did not cancel their lease. In any new building complex, there are always delays and other events that slow down the transition of new residents moving in. This was the case in this matter. The Landlord had not acquired their occupancy permit; however, they notified the Tenants that move-in would be November 1, 2021, and they could inform their previous landlord of their end of tenancy.

Section 7 of the Act states:

***Liability for not complying with this Act or a tenancy agreement***

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
- (2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

RTB Policy Guideline #16 addresses the criteria for awarding compensation to an affected party. This guideline states, *"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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due."* This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze whether:

- a party to the tenancy agreement has failed to comply with the Act, Regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and,

- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Landlord informed the Tenants that they should give their notice to end tenancy at their previous residence as the Landlord's new property was ready for occupancy. Section 25 of the Landlord's addendum to the tenancy agreement states, '*When the Landlord has received the occupancy permit, the Tenant will be given two week's notice of the start date of the term of the tenancy*',. I find that the Landlord had not met the condition of receiving the occupancy permit, and by providing notice to the Tenants of the start date of the term of their tenancy, they breached their tenancy agreement. I find the Tenants incurred damage and loss that directly flowed from the described sequence of events. I also find that the Tenants made reasonable efforts to minimize the damage and losses they experienced when their new housing arrangement was temporarily put on hold. The Tenants are entitled to a monetary award for some of their claims.

The interest charges incurred in December 2021 continued to flow from the bank carrying a balance in the Tenants' line of credit stemming from the expenses they paid for during these events. I find that the Tenants are entitled to compensation for the interest charges incurred in December 2021 as this incurred expense continued from the events during the move-in transition.

I find that the Landlord is under no obligation to compensate the Tenants for a video converter program which they acquired to prepare for their RTB hearing and uploading video files into documentary evidence. This expense is the Tenants to bear.

The Tenants included on their monetary worksheet a credit for rent they would have paid but for the Landlord's notice to end their tenancy at their previous rental unit. I find that their credit amount of \$1,038.51 is reasonable as the Tenants would not have been paying the new rental amount at the Landlord's property because they would not have left their previous residence unless they were certain they had alternative housing over their heads.

The Tenants made a claim for stress, anguish and serious inconvenience in their dealings moving into this newly built residence. It is reasonable, especially in a newly built building, that there would be events that make the moving in process less smooth, however, I find that the breach of the tenancy agreement was negligent, and the subsequent events could all have been avoidable if the Landlord had not notified the Tenants about a move-in date prior to receiving an occupancy permit. I find, based on

all the Tenants' testimony, and on a balance of probabilities, the Tenants are entitled to an additional monetary award of \$1,800.00 pursuant to Section 67 of the Act for loss of quiet enjoyment.

RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenants had claims for the Landlord to provide services or facilities required by the tenancy agreement or law and were seeking an Order for the Landlord to comply with the Act, regulations, and tenancy agreement. These claims are dismissed with leave to re-apply if the Tenants still require this.

As the Tenants are successful in their claim, they are entitled to recovery of the application filing fee.

The Tenants' total Monetary Award is as follows:

| Monetary Claims                             | Amount            |
|---|-------------------|
| Amount agreed per settlement                | 5,242.18          |
| Line of credit interest-Dec                 | \$20.87           |
| Less Rent at previous residence             | -\$1,038.51       |
| Compensation-stress, anguish, inconvenience | \$1,800.00        |
| Application filing fee                      | \$100.00          |
| <b>TOTAL MONETARY AWARD:</b>                | <b>\$6,124.54</b> |

### Conclusion

I grant the Tenants a Monetary Order in the amount of \$6,124.54, and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply

with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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 Act.

Dated: June 08, 2022

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Residential Tenancy Branch