



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPM, OPC, MNRL-S, FFL; CNL-4M-MT, OLC

### Introduction

This hearing dealt with the landlords' application against the tenant, pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession based on a mutual agreement to end tenancy and for cause, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenants' application against the landlord, pursuant to the *Act* for:

- more time to make an application to cancel the landlord's Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit ("4 Month Notice"), pursuant to section 66;
- cancellation of the landlord's 4 Month Notice, pursuant to section 49(6); and
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 62.

"Landlord KS" and the two "tenants," tenant PZ ("tenant") and "tenant JZ," did not attend this hearing, which lasted approximately 18 minutes. Landlord BS ("landlord") and the landlords' agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 11:00 a.m. and ended at 11:18 a.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the

teleconference system that the landlord, the landlords' agent, and I were the only people who called into this teleconference.

The landlords' agent confirmed the names and spelling for herself and the two "landlords." She provided the landlord's email address for me to send this decision to both landlords after the hearing.

The landlord affirmed that he had permission to represent landlord KS at this hearing. He confirmed that the landlords' agent had permission to represent both landlords at this hearing.

The landlords' agent confirmed that she had permission to represent both landlords, who are her parents, at this hearing. She stated that both landlords co-own the rental unit and provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recording of this hearing by any party. At the outset of this hearing, the landlords' agent affirmed, under oath, that neither she, nor the landlord, would record this hearing. The landlords' agent was calling from the same telephone line in the same room as the landlord, during this hearing.

I explained the hearing process to the landlords' agent. She had an opportunity to ask questions, which I answered. She did not make any adjournment or accommodation requests. She confirmed that she wanted to proceed with this hearing.

The landlords' agent testified that the tenant was served with the landlords' application for dispute resolution hearing package on March 19, 2022, to the rental unit where the tenant was residing until March 31, 2022. The landlords provided a Canada Post receipt and the landlords' agent verbally confirmed the tracking number during this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' application on March 24, 2022, five days after its registered mailing, to the rental unit where the tenant was residing until March 31, 2022.

This decision and monetary order are made against the tenant only, since the landlords filed their application against the tenant only, not tenant JZ. The landlords' agent confirmed same during this hearing, stating that tenant JZ was not an authorized tenant at the rental unit.

### Preliminary Issue – Dismissal of Tenants' Application

The landlords' agent stated that the landlords did not receive a copy of the tenants' application for dispute resolution hearing package.

Rule 7.3 of the RTB *Rules* provides as follows:

*7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In the absence of any appearance by the tenants, I order the tenants' entire application dismissed without leave to reapply. I informed the landlords' agent about my decision verbally during this hearing.

Pursuant to section 55 of the *Act*, if I dismiss the tenants' application to cancel a 4 Month Notice, the landlord is entitled to an order of possession, provided that the notice meets the requirements of section 52 of the *Act*.

The landlords' agent confirmed that the tenant vacated the rental unit on March 31, 2022. She stated that the landlords did not require an order of possession against the tenant. I notified her that this portion of the landlords' application was dismissed without leave to reapply and I would not issue an order of possession to the landlords. She confirmed her understanding of same.

### Issues to be Decided

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to recover the filing fee for their application?

### Background and Evidence

While I have turned my mind to the landlords' documentary evidence and the testimony of the landlord and the landlords' agent at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The landlords' agent testified regarding the following facts. This tenancy began on April 1, 2020 and ended on March 31, 2022. Monthly rent in the amount of \$1,000.00 was payable on the first day of each month. A security deposit of \$500.00 and a pet damage deposit of \$300.00, totalling \$800.00, were paid by the tenant and the landlords continue to retain both deposits. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The landlords sold the rental unit to new owners, who took possession on January 31, 2022. The new owners allowed the tenants to reside in the rental unit until March 10, 2022. However, the tenants vacated the rental unit on March 31, 2022.

The landlords' agent stated the following facts. The landlords seek a monetary order of \$3,000.00 for unpaid rent and to recover the \$100.00 application filing fee. The tenant failed to pay rent of \$1,000.00 for each month of November 2021, December 2021, and January 2022, totalling \$3,000.00. The landlords are only seeking unpaid rent until January 31, 2022, while they had possession of the rental unit.

### Analysis

As per section 26 of the *Act*, the tenant is required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlords' agent provided undisputed affirmed testimony and evidence at this hearing, that the tenant failed to pay rent of \$1,000.00 for each month of November 2021, December 2021, and January 2022, totalling \$3,000.00. Therefore, I find that the landlords are entitled to \$3,000.00 total in rental arrears from the tenant.

As the landlords were partially successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant.

The landlords continue to hold the tenants' entire security and pet damage deposits, totalling \$800.00. The landlords applied to retain the tenant's deposits in their application. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain both of the tenants' deposits, totalling \$800.00, in partial satisfaction of the monetary award. No interest is payable on the deposits during the period of this tenancy.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

The landlords' application for an order of possession based on a mutual agreement to end tenancy and for cause, is dismissed without leave to reapply.

I order the landlords to retain the tenant's entire security and pet damage deposits totalling \$800.00, in partial satisfaction of the monetary award.

I issue a monetary order in the landlords' favour in the amount of \$2,300.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant 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: June 17, 2022

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Residential Tenancy Branch