



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNDCL, MNRL, FFL

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$23,756 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 2:31 pm in order to enable the tenants to call into the hearing scheduled to start at 1:30 pm. Both landlords attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that the landlords and I were the only ones who had called into the hearing.

The landlords testified they served that the tenants with the notice of dispute resolution package and supporting documentary evidence via registered mail on October 10, 2021, mailing it to the forwarding address provided by the tenants at the end of the tenancy. Additionally, they testified that they sent these documents to tenant ES by registered mail to his place of work. They testified that they spoke with ES after mailing it, and that he confirmed receipt. Given this verbal confirmation and that the documents were also sent to the forwarding address provided, I deem the tenants sufficiently served for the purposes of the Act. The landlords provided Canada Post tracking numbers confirming these mailings which are reproduced on the cover of this decision. I find that the tenants are deemed served with these documents on October 15, 2021, five days after the landlords mailed them, in accordance with sections 88, 89, and 90 of the Act.

Issues to be Decided

Are the landlords entitled to:

- 1) a monetary order for \$23,756; and
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlords, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The parties entered into a written, fixed-term tenancy agreement starting September 1, 2019 and ending August 31, 2021. Monthly rent was \$2,175 plus utilities (which included municipal water, sewer, and garbage). The landlords did not collect a security or pet damage deposit from the tenants. The tenancy ended at the end of May 2021.

The landlords testified that the tenants owe \$13,994.63 in unpaid rent, calculated as follows:

Date	Owed	Paid	Balance
1-Nov-20	\$2,175.00		\$2,175.00
1-Nov-20		\$1,230.37	\$944.63
1-Dec-20	\$2,175.00		\$3,119.63
1-Jan-21	\$2,175.00		\$5,294.63
1-Feb-21	\$2,175.00		\$7,469.63
1-Mar-21	\$2,175.00		\$9,644.63
1-Apr-21	\$2,175.00		\$11,819.63
1-May-21	\$2,175.00		\$13,994.63
		Total	\$13,994.63

On May 3, 2021, the landlords served the tenants with a 10-day notice to end tenancy for non-payment of rent, specifying arrears of \$11,819.63 (it did not include May 2021 rent). The tenants have not paid any part of this amount, or May 2021 rent, since the tenancy ended.

The landlords testified that the tenants failed to pay two municipal utility bills (\$201.23 for December, January and February; \$212.96 for March, April and May). The landlords

entered a municipal utility bill dated June 22, 2021 into evidence which showed the amount owed for March to June 2021, as well as the prior balance owed. The landlords testified that they did not re-rent the rental unit until August 2021, so no municipal utilities were used in June 2021.

Additionally, the landlords seek \$75 in NSF charges, as the tenants provided postdated cheques for January, February, and March 2021, none of which cleared when the landlords attempted to cash them. The tenancy agreement states, "a surcharge of \$25 will be payable by the tenant for dishonored cheques."

The landlords testified that the tenants caused significant damage to the rental unit during the tenancy. The landlords did not create a move-in condition inspection report at the start of the tenancy. They testified that they did a walkthrough with the tenants, but that did not document it via such a report. However, they testified that before they entered into the tenancy agreement, they had intended to sell the rental unit, and had fully cleaned the unit, repaired all holes or dents in the walls, and painted the interior with three coats of paint.

The landlords testified that at the start of the tenancy the appliances were between 10 to 15 years old but were fully functional. They also testified that the forced air furnace was 25 years old but was in good working order.

Additionally, they testified that they spent four days weeding the backyard and trimming back excess plant growth. They testified that the fruit tree in the backyard was properly manicured, and that the lawn was well maintained.

The tenancy agreement stated:

Tenants are responsible for all yard maintenance to be done in a timely fashion as the season requires (lawn mowing/gardening maintenance and weeding in spring and throughout summer and fall; snow shoveling in winter) and any other required maintenance as necessary (washing dirt from walls/windows), slip prevention on sidewalks. To be clear: yard must be mowed, gardens must be needed, trees must be trimmed and yard waste removed weekly.

The landlords testified that at the end of the tenancy, the backyard was significantly damaged by the tenants' dogs digging holes throughout it, and that it had become "infested" with weeds. Additionally, the tenants did not maintain or prune the fruit tree.

The landlords testified that they had to hire a roto tilling company to rototill the backyard to remove the weeds, as well as to bring in topsoil to spread and compact after rototilling and prune the fruit tree. This was necessary to repair the damage caused by the tenants' pets and their lack of maintenance. This cost the landlords \$1,440. They submitted a copy of the invoice into evidence.

The landlords testified that after the tenants left the rental unit, they discovered that the furnace no longer functioned properly. It would not turn off and it only blew cold air. They also testified that the air filter was completely black with dust. They testified that they had to replace the furnace at a cost of \$4,595.85 for which they are seeking to recover \$2,297.93 (50% of total cost, to reflect the age of the furnace).

The landlords testified but they had to remove the carpet in three of the bedrooms due to excessive staining and foul odours caused by the tenants' pets. They testified that the stains and smell was so bad that the smell had permeated into the subfloor. They were able to clean the carpet on the stairs and the main floor living room so as to avoid replace them, however this was not possible in the bedrooms.

The landlords testified that the tenants never cleaned the furnace duct, the lint trap, or the dryer vent. They hired a company to professionally clean the living room and stairway carpets as well as clean the ducts, vents, and lint trap at a cost of \$630. They submitted a copy of this invoice into evidence.

Additionally, the landlords testified that the tenants tore out the floor in the laundry room and in the hallway between the laundry room and the garage. They are not certain why the tenants did this. They submitted photographs of this damage. They replaced the carpets themselves at cost of \$1,468.15 for materials (I will address the amount claimed for labour below). They submitted an invoice for this amount.

The landlords testified that the tenants broke or removed mesh screens on the sliding doors and windows throughout the house, and that it cost them \$788.20 to replace these. They submitted an invoice for this amount.

The landlords testified that the tenants placed a barbecue too close to the house's siding, and that the siding melted as a result. The landlords had to replace the damaged siding at a cost of \$250. They provided an invoice for this amount.

The landlords testified that the tenants left an excessive amount of nail holes in the walls throughout the rental unit, and that they removed many electrical outlet covers and

doorstops throughout the house. They testified that the rental unit was not adequately cleaned, and that they had to clean the bathrooms, walls, ceilings (which had cobwebs on them), doors, windows slides, toilet as well as behind the refrigerator and stove (which were on runners). They submitted photos supporting this testimony.

Additionally, they testified that there was minor damage to the rental unit throughout including missing towel bars in the bathrooms, a damaged toilet seat, missing or broken floor registers, and a rusted bathroom drain. The landlord had to hire a plumber at cost of \$250, to repair the rusted bathroom drain.

The landlord incurred a myriad of small expenses associated with purchasing supplies to repair the aforesaid damage. In total, they spent \$967.90. They submitted receipts into evidence supporting this amount.

Furthermore, the landlord did the majority of these repairs themselves. They claim compensation for 72 hours work at a rate of \$15 an hour, for a total of \$1,080.

In total, the landlords seek \$9,172.18 in compensation for damage to the rental unit as follows:

Description	Amount
Duct and Carpet cleaning	\$630.00
Yard work	\$1,440.00
Furnace replacement	\$2,297.93
Replacing missing or broken screens	\$788.20
Replace melted siding	\$250.00
Carpets	\$1,468.15
Plumber	\$250.00
Miscellaneous cleaning and repair supplies	\$967.90
Landlord's labour (72 hours @ \$15/hour)	\$1,080.00
Total	\$9,172.18

Analysis

1. Unpaid Rent

I accept the landlord's undisputed testimony in its entirety. Based on the tenancy agreement entered into evidence and on the landlords' testimony, I find that the tenants

were obligated to pay \$2,175 in monthly rent, and that they tenants failed to pay \$13,994.63 in rent from November 1, 2022 to May 1, 2021.

As such, I order that the tenants pay the landlords this amount.

2. Utilities

Based on the tenancy agreement, I find that the tenants are obligated to pay municipal utility bills. I accept the landlords undisputed testimony and that the tenants have failed to pay the final two municipal utility bills in the combined amount of \$414.19. As the rental unit was not occupied in August 2021, I do not find that the final bill would contain any significant charge for utility usage during June 2021.

As such, I order the tenants to pay the landlords this amount.

3. Late Fees

The tenancy agreement states: “a surcharge of \$25 will be payable by the tenant for dishonored cheques.”

Section 7(1)(d) of the *Residential Tenancy Regulation* (the “Regulation”) allows for such a fee to be charged, so long as the tenancy agreement provides for it. It states:

Non-refundable fees charged by landlord

7(1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

I find that the \$25 “surcharge” mentioned in the tenancy agreement is an administration fee as contemplated by the Regulation. As such, the landlord is entitled to impose such a fee.

I accept the landlords undisputed testimony that the tenants provided three cheques which the landlords were unable to cash due to insufficient funds. As such, the landlord is entitled to recover \$75 in NSF charges. I order the tenants to pay the landlords this amount.

4. Damage to rental unit

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It 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. In order to determine whether compensation is due, the arbitrator may determine 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.

Section 32 of the Act, in part, states:

Landlord and tenant obligations to repair and maintain

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2)(a) of the Act states:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, the landlords must prove it is more likely than not that the tenants: breached sections 32 or 37 of the Act or the tenancy agreement itself; that the landlords suffered a quantifiable monetary loss as a result of this breach; and that the landlords acted reasonably to minimize their loss.

As stated above, I accept the landlords undisputed testimony in its entirety. I found their testimony to be measured, in accordance with the documentary evidence submitted, and believable.

As such, despite the fact that they did not conduct a move in condition inspection report at the start of the tenancy, I accept that the rental unit was in good condition when the tenancy started. Accordingly, I find that any of the damage depicted in the photographs submitted into evidence represents damage the tenants caused to the rental unit during the tenancy.

a. Backyard

The tenancy agreement places the responsibility for yard maintenance on the tenants. Based on the landlords' testimony, I find that the tenants caused significant damage to the backyard. The tenants failed to adequately weed the yard, the tenants' dogs dug holes in the lawn, that the tenants failed to prune the fruit tree.

These failures amount to a breach of the tenancy agreement. Based on the invoice submitted into evidence, I find that the tenants incurred a cost of \$1,440 to rototill the backyard, prune the fruit tree, and repair the holes dug in the yard. This amount to be reasonable in the circumstances. I order the tenants to pay the landlords this amount.

b. Furnace

I accept that the furnace no longer functioned properly at the end of the tenancy, and that the landlord was obligated to replace it. However, the furnace was 25 years old. RTB Policy Guideline 40 sets the useful life of a forced air furnace at 20 years. As such, the furnace that was replaced was at the end of its useful life. Accordingly, I am unsure if the reason for the furnace not functioning properly was due to misuse by the tenants, or due to the age of the furnace itself. Even if it were due to misuse by the tenants, the landlord would not be entitled to recover any amount for the furnace's replacement due to the furnace being at the end of its useful life.

As such, I declined to order the tenants pay the landlord any amount for the replacement of the furnace.

c. Duct and carpet cleaning

I accept the landlords' testimony that the tenants had not cleaned the carpet on the stairs or in the living room of the rental unit, and that it was soiled. Similarly, I accept their testimony that the tenants did not clean the ducts, lint trap, or dryer vent, during the tenancy.

RTB Policy Guideline 1 states:

The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

[...]

The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications, and is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary.

[...]

The landlord is required to clean out the dryer exhaust pipe and outside vent at reasonable intervals.

As such, I do not find that the tenants were responsible for cleaning the ducts, lint trap, or dryer vent. This was the responsibility of the landlords. Accordingly, the landlord may not recover any portion of the expense they incurred to undertake this work.

The tenants were, however, responsible for cleaning the carpets at the end of the tenancy. They did not do this. As such, they must compensate the landlords for the cost of cleaning the carpets. The invoice submitted by the tenants for the carpet cleaning and duct cleaning did not itemise the amount for each of the tasks. In the circumstances, I find that \$200 of the \$630 invoice is a reasonable amount to pay for the cleaning of the carpets in the living room and on the stairway. I order the tenants to pay the landlord this amount.

d. Replacing carpets

I accept the landlords' evidence that the tenants tore up the flooring in and around the laundry room and caused significant damage to the carpet in three of the bedrooms, which necessitated the landlords replacing the flooring in these areas. This amounts to a breach of sections 32 and 37 of the Act.

Based on the invoice submitted into evidence I find that the landlords spent \$1,468.15 to replace the carpet in these areas. The tenants must pay the landlords this amount.

e. Melted siding and broken screens

Based on the landlords' testimony and photographic evidence, I find that the tenants caused the siding of the house to melt, and that this damage necessitated the siding's replacement. I also find that the tenants damaged or removed a large number of door and window screens throughout the rental unit. I accepted the landlord incurred \$250 in costs to replace the melted siding, as well as \$788.20 to replace the missing or broken screens. I order the tenants to pay the landlords these amounts.

f. Plumber

Based on the photographs submitted into evidence, I find that the bathtub drain was rusted to a point where it needed to be replaced. I accept the landlords' testimony that in order to replace it, they had to hire a plumber at a cost of \$250. I order the tenants to pay the landlords this amount.

g. Miscellaneous cleaning and repair supplies

Based on the photographs submitted into evidence, I find that the tenants failed to adequately clean the rental unit at the end of the tenancy, in breach of section 27 of the Act. Additionally, I find that they caused numerous instances of small damage to the

rental unit including removal of outlet cover plates, making an excessive number of nail holes in the walls, removing the bath towel rod, damaged a toilet seat and damaged or removed floor register grates. This damage is not ordinary wear and tear. Based on the invoices submitted into evidence I accept the landlords spent \$967.90 on repair and cleaning supplies to remediate this damage. The tenants must reimburse the landlords this amount.

h. Landlords' labour

I accept the landlords' testimony that they undertook much of the repair work and cleaning work themselves. I accept that they spent combined total of 72 hours and undertaking the aforementioned repairs and cleaning. The landlords have claimed \$1,080 the compensation for this time (calculated at \$15 per hour). I find that this amount is more than reasonable compensation for the work the landlords did, and represent significantly less than what an outside contractor would have charged.

I order the tenants to pay the landlords this amount.

In summary, I order the tenants to pay the landlord \$20,928.07, representing the following:

Description	Amount
Rental arrears	\$13,994.63
Unpaid utilities	\$414.19
NSF fees	\$75.00
Carpet cleaning	\$200.00
Yard work	\$1,440.00
Replacing missing or broken screens	\$788.20
Replace melted siding	\$250.00
Carpets	\$1,468.15
Plumber	\$250.00
Miscellaneous cleaning and repair supplies	\$967.90
Landlord's labour (72 hours @ \$15/hour)	\$1,080.00
Total	\$20,928.07

Pursuant to section 72(1) of the Act, as the landlords have been successful in the application, they may recover the filing fee from the tenants.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenants pay the landlords \$21,028.07, representing the unpaid rent, utilities, NSF fees, cost of cleaning and repairs, and the filing fee.

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 8, 2022

Residential Tenancy Branch