



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, MNDL, MNDCL, FFL

### Introduction

The Application for Dispute Resolution (the Application) was filed by the Landlord under the Residential Tenancy Act (the Act), on April 5, 2022, seeking:

- Recovery of \$28,500.00 in outstanding rent;
- Recovery of \$2,300.00 in compensation for damage caused by the Tenants, their pets, or their guests;
- \$5,500.00 in compensation for monetary loss or other money owed due to lawyer fees, previous filing fees, and registered mailing fees; and
- Recovery of the \$100.00 filing fee.

The hearing was convened by telephone conference call at 1:30 PM on December 12, 2022, and was attended by the Landlord, who provided affirmed testimony. No one attended on behalf of the Tenants. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Landlord was advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Landlord was asked to refrain from speaking over me and to hold their questions and responses until it was their opportunity to speak. The Landlord was also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondents must be served with a copy of the Application, the Notice of Hearing, and any documentary evidence intended to be relied upon at the hearing by the applicant(s). As the Tenants did not attend the hearing, I confirmed service of these documents as explained below.

The Landlord testified in the hearing that the Notice of Dispute Resolution Proceeding package (NODRP), which includes the Application and the Notice of Hearing, as well as the documentary evidence before me was sent to the Tenants by registered mail on April 21, 2022. The Landlord provided me with the tracking numbers, a photograph of the addressed envelopes with the registered mail tracking tags attached, and a copy of the registered mail receipt. The registered mail tracking number for each package has been recorded on the cover page of this decision. The Landlord stated that after 3 unsuccessful attempts to deliver the registered mail/have it picked up, both packages (one for each Tenant) were returned to them. The Landlord stated that although the Tenants refused to provide a forwarding address, they followed their moving truck and watched their possessions being unloaded. The Landlord stated that this is the address they used for service.

Based on the Landlord's affirmed testimony, and in the absence of any evidence to the contrary, I am satisfied on a balance of probabilities that the address used for the registered mail is the address at which the Tenants resided after they vacated the rental unit and at the time the registered mail was sent. I am also satisfied that the NODRP and the documentary evidence before me from the Landlord was sent to each of the Tenants, by way of a separate registered mail package, on April 21, 2022. Residential Tenancy Branch (Branch) records indicate that the NODRP package was emailed to the Landlord on April 19, 2022, for service on the Tenants. As I am satisfied that the NODRP and the documentary evidence before me was sent to each of the Tenants via registered mail at a valid address for service on April 21, 2022, I therefore deem the Tenants served for the purposes of section 59(3) of the Act and rule 3.1 of the Rules of Procedure on April 26, 2022, pursuant to sections 88(c), 89(1)(c), and 90(a) of the Act.

I confirmed that the hearing details shown in the NODRP were correct and I note that the Landlord had no difficulty attending the hearing on time using this information. Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that 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. Based on the above and as there was no evidence before me that the parties had agreed to

reschedule or adjourn the matter, I commenced the hearing as scheduled, despite the absence of the Tenants or an agent acting on their behalf.

Although I have reviewed all documentary evidence before me that was accepted for consideration in accordance with the Act and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Landlord, a copy of the decision and any orders issued in their favor will be sent to them by mail.

### Preliminary Matters

The Landlord appeared to have inadvertently filed for the recovery of both the total monetary amount of their combined claims, as well as the individual claim amounts. At the hearing they also stated that they had made a clerical error and inadvertently claimed \$2,300.00 instead of \$23,000.00 for repairs. I confirmed that the Landlord was seeking a total amount of \$28,600.00, including the \$23,000.00 in repairs, not the \$36,400.00 stated in the Application. The claim amount was therefore reduced accordingly.

### Issue(s) to be Decided

Is the Landlord entitled to \$23,000.00 in compensation for damage caused by the Tenants, their pets, or their guests?

Is the Landlord entitled to \$5,500.00 in compensation for recovery of lawyer's fees, registered mailing fees, and previous filing fees?

Is the Landlord entitled to recovery of the \$100.00 filing fee?

### Background and Evidence

The Landlord stated that the rental unit was in good condition prior to the start of the tenancy, and that two bathrooms were significantly damaged during the tenancy because of the Tenants' failure to use the bathroom fans and/or properly ventilate the bathrooms after use of the bath or shower. The Landlord stated that the Tenants advised them that they did not turn on the fan or open the windows as they did not want to be cold. The Landlord stated that their failure to ventilate the bathroom by using the

fan and window caused significant mold in two bathrooms, necessitating the removal of all the drywall and the replacement of drywall and vanities at a cost of \$23,000.00. The Landlord pointed to an invoice in the documentary evidence in support of these costs and their testimony.

The invoice states that the contractor completed \$30,240.00 worth of repairs to the property, \$23,000.00 worth of which were related to the Tenants' misuse of bathroom fans and the subsequent mold issues caused. An email dated April 6, 2021, appearing to be authored by an electrician also states that the bathroom fan was functioning correctly. Finally, copies of text message communications between the Landlord and Tenants were submitted wherein the Landlord advised the Tenants that they must use the fan and open the window from the start of showering until one hour after they are finished to prevent mold.

### Analysis

Section 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit undamaged except for reasonable wear and tear. Residential Tenancy Policy Guideline (Policy Guideline) #1 defines wear and tear as natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

Based on the undisputed documentary evidence and testimony before me, and in the absence of any evidence to the contrary, I accept that the rental unit was in good condition prior to the start of the tenancy, that two bathrooms were significantly damaged during the tenancy as a result of the Tenants' failure to use the bathroom fans and/or properly ventilate the bathrooms after use of the bath or shower, and that the Landlord paid \$23,000.00 to repair the damaged caused to the bathrooms. I also find that the damage does not meet the definition for reasonable wear and tear. As a result, I find that the Tenant's breached section 37(2)(a) of the Act when they failed to leave it undamaged at the end of the tenancy.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results and that the landlord or tenant who claims compensation for damage or loss must do whatever is reasonable to minimize the damage or loss. As there is no evidence that the costs incurred by the Landlord to repair the two bathrooms is objectively unreasonable and as I have already

found above that the damage to the bathroom is a result of the Tenants' breach of section 37(2) of the Act, I therefore grant the Landlord the \$23,000.00 sought.

However, I dismiss the Landlord's claim for recovery of previous filing fees without leave to reapply as they relate to previous applications and previous hearings. I also dismiss the Landlord's claims for recovery of costs incurred to hire a lawyer and send registered mail without leave to reapply. Parties are not required to seek legal representation to file claims or attend hearings at the Branch and I find that parties who do so shall therefore bear the responsibilities for those costs. Parties are also not required to serve documents via registered mail, as it is only one of the available service methods. As a result, I find that the Landlord shall also bear this cost.

As the Landlord was successful in part of their claims, I award them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act, I therefore grant the Landlord a Monetary Order in the amount of \$23,100.00 and I order the Tenants to pay this amount to the Landlord.

### Conclusion

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$23,100.00**. The Landlord is provided with this Order in the above terms and 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 Branch under Section 9.1(1) of the Act.

Dated: December 12, 2022

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Residential Tenancy Branch