



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, MNDL, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlords on March 22, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Recovery of unpaid or lost rent;
- Compensation for damage caused by the Tenants, their pets, or their guests; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. (Pacific Time) on November 21, 2022, and was attended by the agent for the Landlord A.B. (Agent). No one appeared on behalf of the Tenants. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing. All testimony provided was affirmed.

The Agent was advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the 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 Agent was asked to refrain from speaking over me and to hold their questions and responses until it was their opportunity to speak. The Agent was also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent must be served with a copy of the Application and Notice of Hearing, as well as any documentary evidence intended to be relied upon by the applicant. As the Tenants did not attend the hearing, I confirmed service of these documents as explained below. The Agent provided affirmed testimony in the hearing that the Notice of Dispute Resolution Proceeding (NODRP) package, which includes the Application for Dispute Resolution and the Notice of Hearing, as well

as the evidence package, were sent individually to each Tenant on March 30, 2022, by registered mail at the forwarding address provided in writing by the Tenants. The Agent provided me with the registered mail tracking numbers, which have been recorded on the cover page of this decision. The Agent stated that they tracked the packages and although the Tenant E.A.L. picked up their package, the packages for A.A.R. and I.D.M.R. were returned to sender as unclaimed.

Based on the affirmed and uncontested testimony of the Agent, and pursuant to section 90(a) of the Act, I deem the registered mail received five days later on April 4, 2022, as I am satisfied it was sent to the forwarding address provided by the Tenants, regardless of whether the registered mail was ever claimed. Branch records indicate that the NODRP was sent to the Landlord by e-mail on March 28, 2022. As a result, I am satisfied that the NODRP was sent in accordance with section 59(3) of the Act and rule 3.1 of the Rules of Procedure.

The Agent stated that additional documentary evidence was sent to the Tenants on October 29, 2022. The Agent stated that I.D.M.R. and A.A.R. were served by email as allowable under the Act and regulations as they had signed Address for Service forms (#RTB-51) allowing for this. Copies of those documents were submitted for my consideration. I therefore find that they were deemed served on October 31, 2022, pursuant to section 44 of the regulations. The Agent stated that the same documents were sent to E.A.L by registered mail on the same date, and provided me with the registered mail tracking number and receipt. I therefore find that they were deemed served on November 2, 2022, pursuant to section 90(a) of the Act. I have therefore accepted the documentary evidence before me on behalf of the Landlords for consideration.

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. I verified that the hearing information contained in the NODRP was correct, and I note that the Agent had no difficulty attending the hearing on time using this information. As the Agent and I attended the hearing on time and ready to proceed, and I was satisfied as set out above that the Tenants were deemed served with the NODRP for the purpose of the Act and the Rules of Procedure, I therefore commenced the hearing as scheduled at 1:30 P.M. on November 21, 2022, despite the absence of the Tenants or an agent acting on their behalf, pursuant to rule 7.3 of the Rules of Procedure. Although

the teleconference remained open for the full duration of the 45-minute hearing, no one attended the hearing on behalf of the Tenants.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Agent, a copy of the decision and any orders issued in favor of the Landlords will be emailed to them at the email address stated in the Application and confirmed in the hearing.

#### Issue(s) to be Decided

Are the Landlords entitled to recovery of unpaid or lost rent?

Are the Landlords entitled to compensation for damage caused by the Tenants, their pets, or their guests?

Are the Landlords entitled to recovery of the filing fee?

#### Background and Evidence

The Agent stated that rent in the amount of \$3,200.00 was due on the first day of each month under the tenancy agreement and submitted copies of two back-to-back fixed term tenancy agreements in support of this testimony.

The Agent stated that the tenancy ended on March 4, 2022, at which time the Tenants owed \$6,812.90 in outstanding rent for January, February, and March of 2022. As a result, the Agent sought recovery of this amount from the Tenants on behalf of the Landlords. The Agent stated that the Tenants also failed to leave the rental unit reasonably clean and undamaged at the end of the tenancy and that as a result, the Landlords incurred \$19,687.00 in cleaning and repair costs. The Agent stated that these were the first Tenants to occupy the rental unit after it was purchased and significantly renovated and that it was in good condition at the start of the tenancy. The Agent stated that although the first year of the tenancy went well, once the Tenants began to pay rent late, issues began. The Agent stated that the Tenants left cigarette butts in and around the house, that they damaged the walls and blinds, that the rental unit looked as though it had not been cleaned in months at the end of the tenancy, that there was both a

rodent and a fruit fly infestation, that the Tenants had damaged the cabinets in the spice kitchen, as well as flooring, carpets, and tiles. The Agent stated that there was also a significant amount of garbage left behind by the Tenants, that the Tenants had removed and taken several light fixtures from the rental unit at the end of the tenancy, and that the sinks and toilets were clogged. The Agent stated that the rental unit also smelled bad and that rotten pumpkins were thrown in the yard along with a broken trampoline and pool.

The Agent stated that move-in and move-out condition inspections and reports were completed in compliance with the Act and the regulation, and that although the Tenants were present at the move-out condition inspection on March 4, 2022, they refused to participate despite having mutually agreed to complete the move-out condition inspection at that date and time. The Agent therefore sought recovery of the \$19,687.00 in costs incurred by the Landlord for cleaning and repairs, as well as recovery of the \$100.00 filing fee.

Documentary evidence in support of the Application was submitted for my review and consideration including but not limited to rent summaries, copies of text communications, bank payment information, copies of cheques, a one month notice to end tenancy for cause due to repeated late payment of rent, a copy of the Tenants' forwarding address in writing, copies of letters and caution notices issued to the Tenants, and bank records showing payments which the Agent stated were made for the purpose of cleaning and repairing the rental unit and property.

### Analysis

I accept the uncontested documentary evidence and affirmed testimony before me from the Agent as fact.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. As there is no evidence before me that the Tenants had the right to deduct or withhold rent in January, February, or March of 2022, I find that they did not. As a result, I find that the Landlord is entitled to the \$6,812.90 sought for unpaid rent. Section 7(1) 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. Section 37(2)(a) of the Act states

that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I accept that the rental unit was not left reasonably clean and undamaged at the end of the tenancy, except for reasonable wear and tear and pre-existing damage, and that the Landlords incurred the \$19,687.00 in costs claimed to clean the rental unit and repair damage. As a result, I award the Landlords recovery of this amount.

As the Landlords were successful in their Application, I also award them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act.

As there is no evidence before me that the Landlords extinguished their rights in relation to the \$1,600.00 security deposit, I find that they did not. However, as I am satisfied that the Tenants attended but failed to participate in the move-out condition inspection and that the inspection was completed at the mutually agreed upon date and time, I therefore find that the Tenants extinguished their right to the return of their security deposit pursuant to section 36(1) of the Act.

Despite the above, and in accordance with Policy Guideline #17, section D, subsection 4, I have none the less set-off the amount owed by the Tenants to the Landlord, \$26,599.90, by the security deposit amount of \$1,600.00. Pursuant to section 67 of the Act, I therefore award the Landlords a Monetary Order in the amount of \$24,999.90.

### Conclusion

Pursuant to section 67 of the Act, I grant the Landlords a Monetary Order in the amount of **\$24,999.90**. The Landlords are provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants 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 16, 2022

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Residential Tenancy Branch