



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the tenants: CNR  
For the landlord: OPR-DR, MNR-DR, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The tenants' application pursuant to the Residential Tenancy Act (the Act) is for the cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), under section 46.

The landlord's application pursuant to the Act is for:

- an order of possession under the Notice, pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 11:42 A.M. to enable the tenants to call into this teleconference hearing scheduled for 11:00 A.M. The tenants did not attend the hearing. Landlord LY (the landlord) 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 Hearing. I also confirmed from the teleconference system that the landlord, and I were the only ones who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made

by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00.”

The tenants’ application lists tenants LB and VM and respondent landlord HY. The landlord’s application lists landlord LY and respondents VM, LB, RB, AB and BL. The landlord affirmed she is known as HY.

#### Preliminary Issue – Occupants

The landlord stated that respondents RB, AB and BL are minors. The tenancy agreement submitted into evidence states the tenants are LB and VM.

Based on the tenancy agreement, I find the tenants are LB and VM. As RB, AB and BL are not tenants, the landlord may not submit a claim against them.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the landlord’s application against RB, AB and BL, as they are not tenants.

#### Preliminary Issue – Moot claims

The landlord testified the tenants moved out on December 31, 2022.

The application for cancellation of the Notice and an order of possession are moot since the tenancy has ended and the tenants left the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for cancellation of the Notice and for an order of possession.

#### Preliminary Issue – Service

The landlord mailed the notice of hearing and the evidence (the materials) to the tenants on November 26, 2022 and the amendment on December 01, 2022. The tracking numbers are recorded on the cover page of this decision.

Based on the landlord’s convincing testimony and the tracking numbers, I find the landlord served the materials and the amendment in accordance with section 89 of the Act.

### Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. a monetary order for loss?
3. an authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord said the tenancy started in December 2019. Monthly rent when the tenancy ended was \$2,400.00, due on the first day of the month. The landlord collected and holds in trust a security deposit (the deposit) in the amount of \$1,175.00. The tenancy agreement states: "8. The tenants must abide by the strata bylaws and rules as outlined in the Strata Bylaws."

The landlord is claiming compensation for the unpaid rent of November and December 2022 in the total amount of \$4,800.00.

The landlord is claiming compensation for loss of rental income for January 2023 in the amount of \$2,400.00. The landlord affirmed the tenants did not clean the rental unit, damaged the carpet, baseboard heat, windows coverings, refrigerator and dishwasher and are responsible for an excessive amount of nail holes. The landlord started advertising the rental unit on January 09, 2023 because she could not complete the repairs and clean the rental unit before that date. The landlord has not been able to re-rent the unit.

The landlord is claiming compensation for four strata fines in the total amount of \$250.00. The landlord submitted letters from the strata dated December 7, 2021, June 17, 2022 (two letters) and March 01, 2022. The landlord stated she paid the four strata fines.

The landlord is claiming compensation for reprogramming the rental unit's fobs on September 08, 2021. The landlord submitted an invoice dated September 08, 2021

indicating a charge of \$131.25 for “fob programming / fob programmed as per request”. The landlord testified she does not know why the fobs were reprogrammed. Later the landlord said that all the occupants had to reprogram the fobs.

The landlord submitted a monetary order worksheet indicating claims in the amount of \$7,581.25.

### Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(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 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.

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 the case is on the person making the claim.

### Unpaid rent

Section 26(1) 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.

Based on the tenancy agreement and the landlord's convincing undisputed testimony, I find the tenants agreed to pay monthly rent in the amount of \$2,400.00 on the first day of the month and did not pay rent due on November 01 and December 01, 2022.

Per section 26(1) of the Act, I award the landlord November and December 2022 rent in the amount of \$4,800.00 (\$2,400.00 x 2 months).

### Loss of rental income

RTB Policy Guideline 3 sets conditions for loss of rental income claims. It states:

Where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement (section 7(1) of the RTA and the MHPTA). This can include the unpaid rent to the date the tenancy agreement ended and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement.

Further to that, Policy Guideline 5 provides:

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
2. re-rent the unit as soon as possible.

For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.

If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied.

Based on the landlord's convincing undisputed testimony, I find the landlord could not advertise the rental unit until January 09, 2023 because the tenants damaged the unit. I find the landlord minimized her losses by repairing the unit from December 31 to January 09, 2023 and advertising the unit on that date.

Thus, per section 67 of the Act and considering RTB Policy Guidelines 3, 5 and 16, I award the landlord loss of rental income for January 2023 in the total amount of \$2,400.00.

#### Strata fines

Based on the landlord's convincing undisputed testimony and the strata letters dated December 7, 2021, June 17, 2022 and March 01, 2022, I find the tenants breached clause 8 of the tenancy agreement and the landlord suffered a loss in the amount of \$250.00.

As such, I award the landlord \$250.00 in compensation for this loss.

#### Fobs reprogramming

The landlord's testimony about reprogramming the fob was vague. The landlord could not explain why the fobs were reprogrammed.

Based on the landlord's vague testimony, I find the landlord failed to prove, on a balance of probabilities, that the tenants failed to comply with the Act or the tenancy agreement.

I dismiss the landlord's claim.

#### Filing fee and summary

As the landlord was successful in this application, I find the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord. Thus, I order the landlord to retain the tenants' deposit of \$1,175.00 in partial satisfaction of the monetary award granted.

In summary:

Item	\$
Unpaid rent November and December 2022 (\$2,400.00 x 2)	4,800.00
Loss of rental income	2,400.00
Strata fines	250.00
Filing fee	100.00
Subtotal	7,550.00
Minus deposit	1,175.00
Total	6,375.00

### Conclusion

Pursuant to sections 26, 67 and 72 of the Act, I authorize the landlord to retain the \$1,175.00 deposit and grant the landlord a monetary order in the amount of \$6,375.00.

The landlord is provided with this order in the above terms and the tenants must be served with this order in accordance with the Act. 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 Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 24, 2023

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Residential Tenancy Branch