



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes** CNR-MT, MNDCT, DRI-ARI-C, AAT, PSF, RPP, OLC, FFT

### Introduction

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

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46
- monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a determination regarding their dispute of an additional rent increase by the landlords pursuant to section 43;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

MB and BB appeared as agents for the landlord in this hearing. DS appeared for the tenants. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

### **Preliminary Issues: Status of Tenancy and Tenants' Claims**

At the outset of the hearing, both parties confirmed that the tenancy has ended. The tenant testified that the landlord had locked the tenants out while they were moving out. The landlord denies locking the tenants out, and argued that the tenants had moved out and changed the locks.

Both parties also confirmed that no rent increases were imposed, and that the tenants have not paid any additional rent for this tenancy above the standard amount.

Although the tenants have applied for an order for the landlord to return their personal property, the landlord testified that they were not in possession of the tenants' belongings, and do not know where they may be.

Section 62(4)(a) of the *Act* states that an application should be dismissed if the application or part of an application does not disclose a dispute that may be determined under the *Act*. As the tenancy has ended, I exercise my authority under section 62(4)(b) of the *Act* to dismiss the non-monetary portions of the application without leave to reapply.

As no rent increases have been imposed, I dismiss the tenants' application disputing an additional rent increase.

As the landlord claims to not be in possession of any personal belongings, this portion of the tenants' application is also dismissed with leave to reapply.

The landlord confirmed that they were still in possession of the tenants' security deposit as the tenants have not provided a forwarding address.

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

RTB Policy Guideline 17, paragraph 10 establishes the following:

*The landlord has fifteen days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit plus interest to the tenant.*

As both parties were present in the hearing, the tenant's forwarding address was confirmed during the hearing, as noted on the cover page of this decision. I indicated to both parties that the date of the hearing, December 20, 2022, serves as the date that the landlord was served with the tenants' forwarding address, and that that the security deposit must be dealt with in accordance with section 38 of the *Act*.

If the landlord fails to comply with section 38 of the *Act*, the tenants may reapply. Liberty to apply is not an extension of any applicable limitation period.

The hearing proceeded to deal with the tenants' monetary claims.

### **Issues(s) to be Decided**

Are the tenants entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

Are the tenants entitled to recover the filing fee?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on November 1, 2021, with monthly rent set at \$1,600.00, payable on the first of the month. The landlord still holds the security deposit of \$1,600.00 for this tenancy.

The tenants filed this application for a monetary order in the amount of \$6,000.00. The tenants testified that the landlord would often lock them out, and cut their electricity. The tenants submitted a video of the tenants' fiancé attempting to enter the locked gates and doors of the home. The tenants also submitted a video of the basement suite when they did not have power, noting that the landlord still had power upstairs.

The tenants testified that the landlord had locked them out while they were moving out. As a result the tenants were not able to retrieve their personal belongings, which included a bed and other personal belongings. The tenants submitted receipts for clothing, and household items they had purchased on September 6, 2022 in the amount of \$131.84 and another receipt dated September 4, 2022 in the amount of \$156.51.

The tenants also submit that the landlord had also denied the tenants access to wifi, and would not allow the tenants to connect their own. The tenants submit that as a result, the tenants' brother could not work from home, and had to use their personal data to access the internet, incurring extra charges.

The landlord denies ever cutting the electricity citing breaker issues. The landlord states that this took place on July 23, 2022, and was resolved in 15 minutes. In response to the allegations about wifi, the landlord argued that this service was not included in the monthly rent.

The landlord also denies locking the tenants out. The landlord testified that the tenants had caused considerable damage by breaking the window of the basement suite, and making holes in the wall. The landlord submitted a video of the tenants breaking a window of the basement suite on July 30, 2022, and entering the suite through the window. The landlord testified that the tenants had moved out on August 12, 2022, and changed the locks. The landlord testified that the home was empty except for garbage when they entered on September 17, 2022. The landlord testified that they were out of the country from August 15, 2022 to September 3, 2022. The landlord testified that there was a delay as they were ill. The landlord testified that they were only able to gain access to the suite on September 17, 2022 by hiring someone to change the locks.

### **Analysis**

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenants must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

#### ***Liability for not complying with this Act or a tenancy agreement***

*7 (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.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenants bear the burden of establishing their claims on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

In light of the disputed evidence before me, I find that the tenants failed to establish that the landlord had deliberately cut the tenants' power. I also note that despite reference to losses associated with the lack of ability to use wifi in the home, the tenants did not

submit any receipts, invoices, or supporting documents to support the losses claimed. As noted above, the onus is on the applicants to support the actual amount of the loss.

Section 31 of the *Act* states as follows:

**Prohibitions on changes to locks and other access**

**31** (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

(a) the tenant agrees to the change, and

(b) the landlord provides the tenant with new keys or other means of access to the rental unit.

Although the landlord denies restricting or preventing the tenants' access to the rental unit, I find the evidence clearly shows that the tenants had to break into the rental unit on July 30, 2022. This video was submitted by the landlord in their evidentiary materials, and shows the tenants breaking the basement window, and a female entering the rental unit through that window. I do not find the landlord's testimony to be credible as I do not believe that the tenants would have gone to the extent to break into their own suite through a window during the tenancy if they were able to enter the rental unit through their door. I am satisfied that the evidence shows, on a balance of probabilities, that the landlord had prevented the tenants access to their suite on at least that one occasion. I am satisfied that the landlord had contravened section 31 of the *Act* by doing so.

I have reviewed the evidence before me about how the tenancy ended. While the tenants testified that they were locked out of the suite, the landlord provided contrary testimony that the tenants had moved out on their own, changing the locks. Furthermore, the tenants submit that they were unable to retrieve the rest of their personal belongings due to the landlord's actions. The landlord's testimony is that the tenants had moved out, and they were not in possession of any of the tenants' personal property. The landlord claims that they were not able to access the suite as they were out of the country from August 15, 2022 to September 3, 2022. In light of the testimony before me, I do not find the landlord to be credible. If the landlord did observe that the tenants had moved out on or about August 12, 2022, the landlord had the opportunity to enter the rental unit before they left for their trip, after they returned from their trip on or

between September 4, 2022. Although the landlord claimed to have been ill, the landlord did not provide any evidence to support that this was the case, nor any details about the illness itself such as the specific timelines that they were ill. The landlord did not provide a reasonable explanation for why they waited until September 17, 2022 to access the rental unit given the landlord's belief that the tenants had moved out on or about August 12, 2022, and given the past history of issues between the parties. Given the fact that the landlord would have to inspect the unit, and regain possession of the rental unit, and possibly find new tenants, I do not find the landlord's testimony to be convincing nor persuasive. Furthermore, as noted above, I find that the evidence clearly shows that the landlord has locked the tenants out in the past.

Furthermore, although the landlord claims that they had to hire a person to purchase a new lock, and change the locks in order to access the suite on September 17, 2022, the landlord did not provide any receipts, invoices or witness testimony to support this. In light of the testimony and evidence before me, I find that the tenants have established that on balance of probabilities, that they have been locked out on at least on occasion by the landlord.

I note that in support of the monetary losses claimed, the tenants only submitted two receipts for purchases made in September 2022. As noted above, the onus is on applicants to support the actual losses claimed. I am satisfied that the tenants had to purchase new items due to the landlord's contravention of section 31(1) of the *Act*. For this reason, I allow the tenants to recover the losses in the amounts referenced in the two receipts totalling \$288.35. I dismiss the remainder of the tenants' claims without leave to reapply.

As the tenants' application had merit, I allow the tenants to recover the filing fee paid for this application.

### **Conclusion**

I issue a \$388.35 Monetary Order in the tenants' favour for losses associated with this landlord's contravention of section 31(1) of the *Act*, and recovery of the filing fee.

The tenants are provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) 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.

I dismiss the remaining claims without leave to reapply.

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 18, 2023

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Residential Tenancy Branch