



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

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## **DECISION**

Dispute Codes: CNL, MNDCT, RP, FFT

### **Introduction**

The Tenants want compensation from their former Landlord<sup>1</sup> pursuant to sections 67 and 72(1) of the *Residential Tenancy Act* (the “Act”). The claims for an order cancelling a notice to end tenancy and for a repair order are moot because the tenancy has ended.

### **Preliminary Issue: Amendment of Application**

It should be noted that Tenants’ counsel (who was unable to attend the first hearing, but who attended the second hearing) requested that the application be amended to include a claim for the return and doubling of a security deposit.

However, having further considered this request, I am not inclined to grant the amendment. The Tenants have had ample opportunity to amend their application prior to the second hearing but did not do so. The Landlords were notified that this amendment would be requested. Last, the Tenants did not provide any testimony or make any submissions or argument during the first hearing.

As such, this amendment request is denied. The Tenants are at liberty to file a separate application seeking the return and potential doubling of their security deposit.

### **Issue**

Are the Tenants entitled to compensation?

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<sup>1</sup> While there is only one named landlord on this application, the husband and wife both took the role of landlords during this tenancy, and both parties testified and made submissions at the hearings. As such, I will, for ease of reading and for the remainder of this decision, refer to the husband-wife team in the plural as “Landlords.”

## Background, Evidence and Analysis

In reaching this decision, I have considered only the necessary and relevant evidence needed to resolve the issue of the dispute and to explain the decision.

The tenancy began in May 2016 and ended December 1, 2022. Monthly rent was \$4,350 and the Tenants paid a \$2,050 security deposit. A copy of the tenancy agreement was in evidence. Extensive documentary, including photographic, evidence was submitted by both parties.

### **1. Claim for Loss of Yard**

The Tenants seek \$2,400 in compensation for the loss of use of their front and side yards. This is calculated at \$200 per month for twelve months for the time that they lost the use of the yard.

The Landlords ended up digging a trench and doing work on replacing a sewer line. The Tenants testified about lots of digging, that there were weeds, and lots of rocky stoney weedy areas.

Section 28 of the Act requires landlords to ensure that a tenants' rights to quiet enjoyment, including exclusive possession and use—free from significant interference—are protected.

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.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

Taking into consideration all of the relevant oral and documentary evidence before me, it is my finding that the Tenants have proven on a balance of probabilities that the Landlords breached section 28 of the Act by essentially removing the Tenants' use of part of the yard. This is not to say that the Landlords breached the Act purposefully or willfully or with any sort of malice.

However, the Tenants were paying \$4,350 in rent for the use of the house and the yard, but a significant portion of the yard was not in any state that could be enjoyed by the Tenants.

It is my finding that the amount of compensation claimed is reasonable in the circumstances. The Tenants are awarded compensation in the amount of \$2,400 as claimed.

## **2. Claim for Loss of Use of Basement**

The Tenants also seek \$2,000 for the loss of use of their flooded basement. This amount is calculated at \$400 per month for five months from November to April (which, I note, is upwards of six months).

The flooding was extensive. Neither party disputed this simple fact. However, the Landlords did not prove that the Tenants were somehow responsible for the flooding. If the Tenants were, then their claim might be reduced or eliminated. Indeed, the Tenants would be responsible for the costs pursuant to section 32(3) of the Act. That having been said, the Landlords did all that was reasonably necessary to address the flooding.

Landlords are required to provide a residential property in a state that makes it suitable for occupation by a tenant (section 32(1)(b) of the Act). This occupation suitability must consider the age, character and location of the property.

While the Landlords appeared to take all necessary steps in addressing the issue, the fact remains that the basement portion of the rental unit was not provided in a suitable occupational state by the Landlord.

Having found that the Landlord breached the Act in this manner—though through no fault of their own—they are required to compensate the Tenants for their loss of the use of the basement. Given that \$400 per month represents only 10% of the monthly rent and given the size of the unusable basement during the period in question, I am persuaded that the Tenants are entitled to this amount of compensation. The Tenants are awarded \$2,000.

## **3. Claim for Cost of Asbestos and Mold Testing**

The Tenants seek \$1,670 in compensation to pay for the cost of asbestos and mold testing for health and safety purposes.

The Landlords testified that this expense was unnecessary, as their contractor already took care of the testing. However, the Tenants did not trust the contractor's results and hired separate testing.

I am not satisfied, based on the oral and documentary evidence before me, that the Landlords are somehow liable to pay for these costs. The Tenants have not proven that they incurred these costs due to a breach of the Act by the Landlords and that these costs were anything but unavoidable. Indeed, the Landlords paid for this testing, but the Tenants felt that it was necessary to have their own testing undertaken. I disagree, and this aspect of the Tenants' application for compensation is thus dismissed.

#### **4. Claim for Compensation for Loss of Useable Home**

The Tenants seek \$10,850 in compensation for the loss of a useable home. They were unable to reside in the home due to extensive repairs and renovations, which included asbestos issues. This occurred over a period of 2.5 months and the amount claimed represents the rent paid over that period.

The Tenants, after unsuccessfully negotiating what would happen to their tenancy while they had to be out of the property during the repairs, moved most of their belongings out of the rental unit on or about July 1. They had made alternative living arrangements but were "unsure of whether to pay rent." They continued to pay rent but had, for all intents and purposes, vacated the rental unit. It was not until mid-September—two and a half months after vacating the property—that the property was restored to a condition of liveability and occupancy.

While the Tenants chose to leave some of their belongings in the house whilst living elsewhere, and while they chose to continue paying rent, it is my finding that the tenancy effectively ended when they chose to vacate on June 29 or July 1. A tenancy may be found to have ended when a tenant vacates a rental unit (section 44(1)(d) of the Act).

That the Tenants chose to continue paying full rent is not, I find, a reasonable action in minimizing their loss, which is a requirement when claiming compensation under section 7 of the Act. For this reason, I am unable to find that the Tenants are entitled to compensation claimed under this specific portion of their application. This claim is therefore dismissed without leave to reapply.

## **5. Claim for Cost of Application Fee**

The Tenants seek to recover the cost of the \$100 application fee. As they were successful with a portion of their application, they are entitled to recover a portion of the cost of the fee. The Tenants are awarded \$50 as partial recovery of the fee.

### Conclusion

For the reasons given above the Tenant's application is granted, in part.

The Tenants are awarded \$4,450.00 in compensation. Pursuant to section 67 of the Act the Landlord is hereby ordered to pay this amount to the Tenants.

A monetary order ("Order") in this amount is issued with this Decision to the Tenants. The Tenants are responsible for serving a copy of the Order upon the Landlord.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: June 1, 2023

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Residential Tenancy Branch