



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OPM, MNDCL-S, FFL

### Introduction

The Landlord filed an Application for Dispute Resolution (the “Application”) on May 2, 2023 seeking an order of possession for the rental unit, compensation for monetary loss/other money owed, and to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 24, 2023. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The Landlord attended the telephone conference call hearing; the Tenant did not attend.

### Preliminary Matter – Notice of Dispute Resolution Proceeding to Tenant

To proceed with this hearing, I must be satisfied that the Landlord made reasonable attempts to serve the Tenants with this Notice of Dispute Resolution Proceeding. This means the Landlord must provide proof that they served the document in a method allowed under s. 89(2) of the *Act*, and I must accept that evidence.

The Landlord provided testimony and evidence that they used registered mail for this purpose, to each Tenant in separate registered mail pieces. They included a registered mail receipts in the evidence to show they sent this on May 5, 2023. They stated the Tenants did not retrieve this registered mail.

Based on the submissions of the Landlord, I accept they served each Tenant notice of this hearing and their Application in a manner complying with s. 89(2)(b) of the *Act*, and the hearing proceeded in the Tenants’ absence.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession in line with a mutual agreement to end tenancy, pursuant to s. 55 of the *Act*?

Is the Landlord entitled to monetary compensation for other money owed, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord presented the basic terms of the agreement in the form of the tenancy agreement they submitted in evidence. This shows the tenancy started on February 15, 2022. The basic rent amount was \$2,650 per month, and the Tenants paid a security deposit of \$1,325. The Landlord was holding the deposit as of the date of this scheduled hearing.

The Landlord presented a Mutual Agreement to End Tenancy in their evidence. This has each Tenant's signature to show they agreed with the terms therein: the tenancy ending on May 31, 2023.

In the hearing, the Landlord stated the Tenants moved out from the rental unit on May 31, 2023. The Landlord briefly described the circumstances that led to the end of this tenancy, and provided that one Tenant was not allowed back by the police. This left the remaining Tenant to end the tenancy. The Landlord made this Application for Dispute Resolution in early May; they stated this was a precaution given the circumstances of the tenancy.

The final month of rent for the Tenant was waived by the Landlord. This is as set out in another document the Landlord provided, known as a "compensation letter" and signed by the Landlord, and each Tenant. This provided for May 2023 rent waived, and \$500 to the Tenant as moving expenses.

The Landlord, on this Application, filed for the full amount of May rent at \$2,650, and moving expenses of \$500.

The Landlord scheduled an inspection for the rental unit on May 31, 2023. In the hearing they stated the Tenant did not attend that scheduled meeting. The Landlord listed the following amounts for damage to the rental unit, discovered after the Tenant moved out:

- \$442 utilities amounts owing (no documentation in the Landlord's evidence)
- \$200 carpet/rental unit cleaning (no invoices in the evidence)
- \$60: trash removal charges (no invoice)
- \$70: replace doors and locks (no invoice)
- \$1,300 (estimate) for damage to 2 tables, screens and windows (no proof thereof)

This total cost, as provided by the Landlord in the hearing, was \$2,172. They proposed using the security deposit they were still holding toward this compensation amount.

### Analysis

I dismiss the Landlord's Application for an Order of Possession in full, without leave to reapply. The Landlord in the hearing stated they made this Application as a precaution prior to the scheduled tenancy-end date. By May 31, the Tenants moved out from the rental unit; therefore, there is no need for an Order of Possession.

Similarly, the Landlord claimed the amount of May rent in full, as well as moving expenses paid to the Tenant upon their signing of the mutual agreement. The Tenant fulfilled their part of the agreement; therefore, there is no return of any part of these amounts to the Landlord.

I find the Landlord in the hearing basically sought to amend their Application to include compensation for damage in the rental unit, cleaning costs, and utilities. The Landlord did not formally amend their Application prior to the hearing, and did not provide evidence of the amounts or the need for them in the form of pictures of damage in the rental unit.

I find it unfair if I amend the Landlord's Application unilaterally, without the Tenants being notified of that amendment. Should they have chosen to do so, the Tenants may have attended the hearing to speak to the matter of cleaning/damage/utilities. They

were not given the opportunity to do so. The Landlord could have amended their Application in advance and provided evidence of their claim for compensation.

I grant no compensation to the Landlord otherwise. At this point in time the Landlord has not received a forwarding address from the Tenant, and so may properly be holding the security deposit. The Landlord must re-apply in proper fashion to make a claim for other compensation against that security deposit as the *Act* requires.

### Conclusion

I dismiss the Landlord's Application for an Order of Possession, without leave to reapply. I dismiss the Landlord's compensation claim for monetary loss/other amounts as indicated on their Application, with leave to reapply. Because the Landlord did not amend their Application for other compensation as they were seeking in the hearing, I grant no reimbursement of the Application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: August 28, 2023

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Residential Tenancy Branch