



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes:** Tenants: RR, LRE  
MNDCT, RP  
MNDCT, OLC  
MNDCT, LAT

Landlord: MNRL, MNDL-S, MNDCL-S, FFL

## **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for compensation for money owed or damage under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenants requested:

- a monetary order for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

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.

The tenants confirmed that they had filed four separate applications, and that one of the applications was a duplicate application and not served on the landlord. Accordingly, this application was cancelled, and not considered.

The landlord confirmed receipt of the tenants' other applications and evidence and that they were ready to proceed with the scheduled hearing. The tenants confirmed receipt of the landlord's application, amendment, and evidence. In accordance with sections 88 and 89 of the *Act*, I find both parties duly served with each others' hearing documents.

### **Settlement**

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of some of the issues.

Both parties agreed to the following final and binding settlement as set out below

1. Both parties agreed that this tenancy will end on July 28, 2023, by which date the tenants and any other occupants will have vacated the rental property.
2. Both parties agreed to attend a move-out inspection at 5:30 p.m. on July 31, 2023.
3. The tenants agreed to pay the July 2022 rent by way of electronic transfer to the landlord on or before July 28, 2023. As allowed by section 19(2) of the *Act*, the tenants will deduct the \$525.00 in overpayment of the security deposit from the total rent owed for July 2023 (\$1,050.00 - \$525.00 = \$525.00).

Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable.

As the tenants agreed to move out, the non-monetary portions of their applications are dismissed without leave to reapply.

The landlord filed an application pertaining to damage and losses associated with this tenancy, and to apply the tenants' security deposit against these losses. Section 37(2)(a) of the *Act* stipulates 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. If the tenants contravene the *Act*, the landlord may apply to recover the costs associated with this contravention. As this tenancy had yet to end at the time of the scheduled hearing, I find that the landlord's application was premature. Accordingly, the landlord's monetary claims are dismissed with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As no findings were made in relation to the landlord's claims, the landlord is not entitled to recover the \$100.00 filing fee paid for their application.

### **Remaining Issues**

Are the tenants entitled to an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

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

### **Background and Evidence**

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

This fixed-term tenancy began on September 1, 2022, and continued on a month-to-month basis after February 28, 2023. Monthly rent is set at \$1,050.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$1,050.00 for this tenancy.

The tenants requested a rent reduction in the amount of \$4,200.00 for this tenancy, plus an ongoing 50% rent reduction for the following reason: *"This suite is not safe and properly facilitated. The edges of the handle of the bathtub door are sharp. The door connecting the main building is only locked from the main building side. People have the access to our suite at all times. The stove has been broken for months and it's still not fixed. I am asking half of the rent back and a 50% reduction of the future rent starting from May 2023 before the sharp edges are replaced, the stove be repaired or replaced and the lock be replaced."*

The tenants also filed a monetary claim in the amount of \$7,620.00 for the following reasons: *"1. \$600 for the income loss 2. \$20 for the bandits 3. \$2000 for the physical wound 4. \$5000 for all the pains and mental damages"*.

The tenants confirmed that the stove was repaired and working as of the hearing date.

The tenants testified that the landlord had refused to repair the handle to the bathtub door, which was sharp, and caused injury to the tenant's finger on April 3, 2023. The tenant testified that their finger was bleeding and in pain, and despite this, the landlord refused to acknowledge that there was an issue. The tenant states that the tenant received a shot, had the wound wrapped, and was asked to rest for a few days.

The tenants felt that the handle was sharp and dangerous, and was not addressed despite the injury. The tenants also expressed concern about how their seven year old daughter could have been injured. The tenants requested the rent reduction plus above compensation.

The landlord denies that repairs were required to the bathtub door handle, and that the tenants failed to establish that the cut or losses claimed were due to unsafe conditions due to the landlord's actions. The landlord states that the handle was a standard one, and was not sharp or broken.

### **Analysis**

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter " tenant 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 bears the burden of establishing their claim 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 tenants 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.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

**32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that**

*(a) complies with the health, safety and housing standards required by law, and*

*(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

I have reviewed and considered the evidence and testimony before me. On preponderance of all evidence and balance of probabilities I find as follows.

As stated above, the tenant applicants have the burden of proof in supporting their claim for a rent reduction and monetary compensation. In this case, the tenants requested a rent reduction as well as monetary compensation related to the landlord’s failure to perform requested repairs.

As noted above, the burden of proof falls on the applicant to support their claim. In this case, I am not satisfied that the tenants had demonstrated that the bathtub door handle was sharp or unsafe. As noted by the landlord, the handle was a standard handle. I do not find that the tenants provided sufficient evidence to show that the handle was damaged, or did not meet safety standards.

Although I accept that the tenant did suffer a cut and injury to their finger, I am not satisfied that this injury was due to the landlord’s negligent actions, nor am I satisfied that the injury was due to a contravention of the *Act* or tenancy agreement. Accordingly, I dismiss the tenants’ request for a rent reduction and monetary compensation without leave to reapply.

I find that the landlord had responded to the tenants' other concerns by replacing the stove. I am not satisfied that the landlord has neglected to repair the rental unit in a timely manner during this tenancy, and therefore I dismiss any claims against the landlord for failure to perform repairs.

**Conclusion**

To give effect to the settlement reached between the parties and as discussed with them during the hearing, I issue an Order of Possession to the landlord, which is to take effect by July 28, 2023. The landlord is provided with this Order in the above terms and the tenants must be served with this Order in the event that the tenants do not abide by condition #1 of the above settlement. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In order to implement the above settlement reached between the parties, and as advised to both parties during the hearing, the landlord will be provided with a Monetary Order in the amount of \$525.00. The tenant(s) must be served with a copy of this Order as soon as possible in the event that the tenants do not abide by condition #3 of the above agreement. Should the tenant(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.

The landlord's application to recover the filing fee is dismissed without leave to reapply.

I dismiss the remainder of the landlord's application with leave to reapply. Leave to reapply is not an extension of any applicable timelines.

The remainder of the tenants' application is dismissed 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: August 24, 2023

---

Residential Tenancy Branch