



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MOON CONSTRUCTION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR OPR MNR MNDC RPP FF

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* ("the Act"). The landlord applied for: an Order of Possession for Unpaid Rent pursuant to section 55; a monetary order for unpaid rent and damage to the unit pursuant to section 67; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenant originally applied pursuant to the *Act* for: cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46; a monetary order for damages as a result of the landlord's actions pursuant to section 67; and that the landlord make repairs to the rental unit pursuant to section 33.

At the hearing, the tenant (in attendance) provided undisputed testimony that the tenants had vacated the rental unit on or before March 1, 2018. The tenant withdrew the application to cancel the landlord's Notice to End Tenancy and for an order that the landlord make repairs to the unit. The landlord withdrew the application for an Order of Possession. The landlord and the tenant continued with their monetary claims each other.

Two landlords, the tenant and the tenant's son (assistant) attended the hearing. Both parties were given a full opportunity to be heard, to present their affirmed testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

### Preliminary Matter: Landlord Application to Amend

The landlord sought to amend the application for a monetary order against the tenant to include compensation for damage to the rental unit at the end of the tenancy. The

landlord submitted an amendment to her application by fax the evening prior to this hearing date. Residential Tenancy Branch Rules of Procedure Rule 4 states that an applicant is entitled to apply for an amendment prior to the hearing date and in a manner that allows the respondent to know the nature of the amendment sought. Rule 4.3 provides that an amendment must be made “as soon as possible and in any event early enough to allow the applicant to comply with Rule 4.6”. Rule 4.6 states that service of an amendment application must be provided to the respondent 14 days prior to the scheduled hearing date.

At the hearing, the tenant and her assistant testified that, while they were aware that landlord PM had told them that he would seek compensation for damage to the rental unit but that the landlord had not been provided a comprehensive breakdown or enough evidence to mount a response to the landlord’s claim. As the landlords did not serve the respondent/tenants in accordance with the Act and Rules of Procedure and as the tenants did not have a sufficient and fair opportunity to accept or respond to the landlord’s amendment application, I find that the landlord’s request to amend the application should be dismissed. The landlord made the application to amend their monetary application well after the allowable time to submit an amendment had passed and over one month after the end of this tenancy. **The landlord’s application for amend the amount of the landlord’s monetary claim to include damage to the rental unit is dismissed.**

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and is the landlord entitled to recover the \$100.00 filing fee for this application?

Is the tenant entitled to a monetary order for damages against the landlord?

#### Background and Evidence

This tenancy began on April 1, 2017 and continued on a month-to-month basis with a rental amount of \$1200.00 payable on the first of each month. The evidence before me shows a security deposit for \$1200.00 paid at the outset of this tenancy. The landlord did not dispute that a security deposit equivalent to the full rental amount had been paid by the tenants at the outset of the tenancy. The tenants have vacated the rental unit. The landlord continues to hold the tenants’ \$1200.00 security deposit.

The landlord testified that a Notice to End Tenancy for Unpaid Rent was issued to the tenant after she failed to pay the full month of January 2018: the landlord provided

undisputed testimony that the tenant still has an outstanding rental amount of \$70.00 from January 2018 outstanding. The landlord submitted a copy of a mutual agreement to end tenancy effective February 5, 2017. The landlord provided undisputed testimony that the tenant remained in the rental unit for the entire month of February 2017 but did not pay rent in February 2017 prior to the end of tenancy. The landlord also issued a 1 Month Notice to End Tenancy for Cause when the tenant failed to vacate the rental unit in accordance with the mutual agreement to end tenancy. The tenant ultimately vacated the rental unit on March 1, 2017.

During some of the tenant's testimony during the hearing, she acknowledged that she had failed to pay the entirety of January 2018 rent and that she did not pay rent in February 2018 despite remaining in the unit. At other times, the tenant and her assistant denied that any rent was unpaid referring to a multitude of receipts/cheques to show payment of rent over the course of the tenancy. The tenant submitted that the landlord required her to pay "first and last months' rent" at the outset of the tenancy and therefore she did not need to pay rent the last month of her tenancy (February 2018). The tenant explained that in referring to 'first and last months' rent, she is referring to the fact that the landlord took double the amount of security deposit amount allowed by the Act – that the landlord held \$1200.00 (a full months' rent) instead of \$600.00 (a half months' rent). The landlord did not dispute that he held a \$1200.00 security deposit from the tenant.

In addition to applying to recover \$70.00 unpaid rent from January 2018 and the entire \$1200.00 unpaid rent from February 2018, the landlord sought \$152.00 in unpaid utilities. The landlord also testified to cost for repairs to the unit after the end of this tenancy including but not limited to \$1000.00 to repair a doorframe, fill holes in walls and ceilings, paint the unit and hire a cleaner at the end of the tenancy. This portion of the landlord's application (for damage to the rental unit) is dismissed with leave to reapply. Both parties also sought an additional amount in aggravated damages from the other party. The landlord testified that her application and this hearing would not have been necessary but for the actions of the tenant and that therefore, the tenant should compensate all the landlord's time and expenses for this application. The tenant submitted that the landlord caused her aggravation and made her tenancy (and her move-out process) untenable. She claimed \$1200.00 for 'aggravation' as a result of the landlord's behaviour during the course of the tenancy. The tenant (in attendance at this hearing) did not submit documentary materials with respect to the 'aggravation' however she did provide testimony to describe her frustrations in communicating with the landlord.

The tenant gave undisputed testimony that she provided her forwarding address to the landlord on March 21, 2018. She applied to recover the \$1200.00 security deposit still held by the landlord. The tenant provided a monetary worksheet showing the compensation she sought from the landlord in the amount of \$1000.00 as follows,

- \$500.00 in an increased in estimate moving costs as a result of the landlord's obstruction and delay of the move-out process; and
- \$500.00 for a garden table that the tenant was unable to retrieve from the rental unit - submits the landlord prevented the tenant from recovering.

The tenant (at this hearing) and her son both testified that she had over \$900.00 in moving costs. The tenant testified that these costs would have been substantially less if the landlord had not regularly intervened, blocked the movers from moving items out of the home and generally slowed down the entire moving process. She sought to recover \$500.00 of the \$900.00 in moving costs from the landlord. The tenant did not submit a copy of an invoice for the move.

The tenant testified that she left a garden table at the rental unit because the landlord would not allow her access to the unit after the day of her move. She testified that, after she moved out, the landlord would not allow her back into the rental unit although she had paid rent for the entire month of February 2018. The tenant testified that she became uncomfortable meeting with the landlord and therefore did not return the keys to the rental unit until March 21, 2018. The landlord testified that the table is still at the rental property and the tenant's son testified that he would pick up the table. He testified that the son could still pick up the table at the rental property.

The landlord denied that he disrupted the moving process when the tenant was vacating the rental unit. The landlord testified, however, that there had been a recent snowfall and he needed to restrict the way in which the movers moved the tenants' belongings out of the rental unit and express safety concerns during the process.

### Analysis

While I have considered all the documentary evidence, including photographs, letters and e-mails, as well as the testimony of all of the parties attending this hearing, not all details of the respective submissions and / or arguments are reproduced in this decision. I have provided a synopsis of the submissions of the parties above in 'background and evidence' and, in this section, I will address the principal aspects of both party's claims. My findings around each portion of the tenants' and landlord's claims are set out below.

At this hearing, both parties indicated they wished to apply for a larger amount in what might be called aggravated damages against the other party for the need to participate in a dispute resolution hearing and for 'aggravation' or irritation during the course of the tenancy. Residential Tenancy Policy Guideline No. 16 addresses claims for aggravated damages,

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

...“Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

Aggravated damages are intended to compensate someone wronged, for aggravation to the original injury caused as a result of the wrongdoer's willful or reckless indifferent behaviour. The damages are measured by the wronged person's suffering. In this case, I find that there is insufficient evidence to support a claim for aggravated damages by either party. I have no doubt that the other however I find that a landlord/tenant relationship that has become vexatious or the need for dispute resolution between the parties does not meet the threshold for aggravated damages annoyed both parties. I find that both parties submitted insufficient evidence to support a claim for loss of quiet enjoyment or aggravated damages. I dismiss each party's application for aggravated damages or expenses in preparation for this hearing. In these circumstances, their expenses are not compensable.

With respect to the landlord's claim for unpaid rent, I rely on the testimony of the landlord as well as the Notice to End Tenancy for Unpaid Rent submitted for this hearing. The Notice to End Tenancy issued to the tenant, along with her own testimony, proves that she failed to pay the full month of January 2018 leaving \$70.00 unpaid. I accept the testimony of the landlord that \$70.00 rental arrears from January 2018 remain outstanding. I find that the tenant's evidence did not prove she had paid the outstanding \$70.00.

Furthermore, on a balance of probabilities, I find that the tenant did not pay rent for February 2018. The tenant did not provide sufficient rebuttal evidence to show that she had paid the \$70.00 or the final months' rent (February 2017) for \$1200.00. At some

points, she relied on the claim that the landlord cut off her heat and water before she vacated the rental unit. However, she provided insufficient evidence to support this claim. I find that the landlord is entitled to \$1270.00 in unpaid rent from the tenant. I note that the tenant is correct in stating that the landlord overcharged the tenant for her security deposit. Pursuant to section 72, the landlord is entitled to keep \$1200.00 in security deposit to offset the amount of unpaid rent.

I accept the testimony of the tenant that the landlord delayed the moving process for the tenant. The landlord candidly acknowledged that he restricted the movers in their work because he considered their methods unsafe. The tenant, however, did not provide a copy of a moving invoice to verify her moving costs. In these very particular circumstances, where the landlord admitted to his presence at the rental unit on the day of the move and admitted to restricting certain aspects of the mover's plans, I find that the tenant is entitled to a nominal amount towards the cost of the movers.

Pursuant to Policy Guideline No. 16 on damages, nominal damages "are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right." I find that the landlord obstructed the tenant's moving process. Given the level of unhappiness with each other, I accept that the landlord frustrated and slowed the moving process. I accept the evidence of the tenant's son that provided details of the landlord's actions that day. To reflect the landlord's exaggerated behaviour, I provide the tenant a nominal amount of \$70.00 for the delay in her move.

The tenant's son and property owner agreed that the son/assistant would pick up the tenant's table after this hearing. I order the property owner to allow the tenant to attend and pick up the garden table from the rental unit premises. I order that, upon being contacted by the tenant's son, the property owner must provide two possible pick up dates and times and provide access to remove the table. I also order that the landlord ensure that the table is reasonably clean and undamaged. The tenant is not entitled to compensation for the table because she has not submitted evidence of the table's purchase or current value. The table will be returned to the tenant. I dismiss her application for \$500.00 for the table.

### Conclusion:

The application by the landlord for an Order of Possession was withdrawn.  
The application by the tenant to cancel a Notice to End Tenancy was withdrawn.

As the tenant has vacated the rental unit, any orders with respect to any repairs are moot and therefor dismissed.

The landlord's application to amend the amount of the landlord's monetary claim to include damage to the rental unit at the end of tenancy is dismissed with leave to reapply.

I order the landlord to allow the tenant's assistant/son to attend and pick up the garden table from the rental unit premises as provided above.

The landlord is entitled to a monetary order as follows,

<b>Item</b>	<b>Amount</b>
Unpaid Rent – January 2018 (\$70.00) & February 2018 (\$1200.00)	\$1270.00
Less Nominal Amount re: Moving Cost	-70.00
Less Security Deposit	-1200.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$100.00</b>

The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. 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.

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: May 04, 2018

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Residential Tenancy Branch