



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"). The Landlord applied for a monetary claim of \$4,900.00 for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the \$100.00 cost of their Application filing fee. This hearing was ordered after the Tenants applied for a review of the original decision of an arbitrator to award the Landlord with an order of possession and a monetary order of \$2,500.00. The arbitrator who reviewed the adjudicator's decision confirmed the order of possession, but ordered a new hearing for the monetary order. This is the Decision from that hearing.

The Landlord and a witness for the Landlord, A.L. ("Witness"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenants. The teleconference phone line remained open for over 30 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlord and her Witness, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Landlord and her Witness.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenants did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that she served the Tenants with the Notice of Hearing

documents in person on April 1, 2021. The Landlord said she had the Witness present when she served these documents, which the Witness confirmed in the hearing. The Landlord also said that she served everything to the Tenants that she had uploaded to the RTB. I find that the Tenants were deemed served with the Notice of Hearing documents and evidence in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenants.

### Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and she confirmed these addresses in the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

The Landlord amended her Application to take into account the lost rent she suffered in January 2021, which she had not anticipated when she first applied for dispute resolution on December 8, 2020. This matter is further explained and analyzed below.

As a result of that analysis, and pursuant to Rule 4.2 and section 64(3)(c) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought, reflecting the Tenants' ongoing behaviour that prevented the Landlord from earning rental income in January 2021. I find no prejudice to the Tenants, as they are aware of the condition in which they left the rental unit. It was unreasonable of them to believe that it was ready for the next tenant to move in after they had left. As such, I find that they could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing for December 2020 and January 2021. Accordingly, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenants from \$2,500.00 to \$4,900.00, including the \$100.00 Application filing fee.

### Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to Recovery of the Application filing fee?

### Background and Evidence

The tenancy agreement states, and the Landlord confirmed in the hearing that the fixed-term tenancy began on July 24, 2020, and was to run to July 24, 2021. It required the

Tenants to pay the Landlord a monthly rent of \$2,400.00, due on the first day of each month. The Landlord confirmed that the Tenants paid her a security deposit of \$1,200.00, and a pet damage deposit of \$1,200.00 and that she still holds these deposits to apply to this claim. The Landlord said that the tenancy ended when the Tenant moved out on December 31, 2020.

The Landlord said that in every month since August 2020, she has had to serve the Tenants with a 10 Day Notice to End the Tenancy for Unpaid Rent. She said that ultimately, she served them with a One Month Notice to End the Tenancy for Cause. However, the Parties signed a Mutual Agreement to End the Tenancy that was executed on December 20, 2020, by all Parties ("Mutual Agreement"). The Mutual Agreement has the Parties' names and addresses at the top of the document and then states:

1. We agree that the tenancy at [rental unit address] will end at noon on the 31<sup>st</sup> of December, 2020 and the tenants will have vacated the rental unit before then.
2. The tenants agree to forego and relinquish both the Security and the Pet Deposits to the landlord in lieu of December's rent payment.
3. The tenants agree that the house and yard will be clean and undamaged before they vacate. The tenants agree that any extra charges for cleaning or repairs will be borne by them and not the landlord.

By signing this document, both the landlord and the tenants are bound by its terms and conditions.

[Signed and dated by both Tenants and the Landlord on December 20, 2020.]

The Landlord said that she had a new tenant arranged to move in on January 1, 2021; however, she said she was concerned that the Tenants would leave a mess, and she said they did. The Landlord referred me to photographs she had submitted of the condition of the residential property after the Tenants moved out. The following describes the photographs I viewed:

- Overflowing garbage cans and bags of food, furniture, and other garbage left filling carport;
- Garbage and other debris left filling patio and blocking storage shed;
- Furniture left on deck – to be taken to the dump;
- Refrigerator and stove missing from kitchen;
- Kitchen wall tiles stained;

- Filthy bathroom floor and toilet;
- Debris left in living room and office;
- Assorted heavy pieces of furniture left behind;
- Heavy pallets left in bedrooms;
- Food left in freezer;
- Broken refrigerator – missing shelves and drawers; and
- Damage to master bedroom door.

The Landlord said that it took seven dump loads to remove what was left behind, because she said: “It wasn’t even donatable.” She didn’t claim compensation from the Tenants for the trips to the dump and all the work of making the residential property inhabitable by someone else. Rather, I find that the Landlord submitted evidence of the condition of the rental unit at the end of the tenancy to support her claim for compensation from the Tenants for the loss of January 2021 rent.

The Landlord said she is claiming an extra \$2,400.00, because the Tenants were supposed to be out by noon on December 31, 2020. She said:

They were supposed to be out by noon. They said they couldn’t get a moving truck until 11. Friends were helping her to clean up. 9 p.m. was the last time I spoke with her. We went through at 8 a.m. on the first to make sure everything was okay for new tenant moving in at noon. I’ve never seen anything like it. I had to call my new tenant and say this is what I’m facing. Getting it cleaned up ... He said he had decided to take his second option.

I lost my tenant, and it was late in the month to get a new tenant – nothing would happen until February. I lost out on January’s rent.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

As set out in Policy Guideline #16 (“PG #16”), “The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due.”

Section 26 of the Act states: “A tenant must pay rent when it is due under the tenancy

agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.” There is no evidence before me that the Tenants had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

I find that the Tenants had agreed to vacate the rental unit by noon on December 31, 2020; however, the residential property remained filled with old furniture, garbage and other debris making the premises uninhabitable by the next tenant. I find that this neglect on the part of the Tenants caused the Landlord to lose out on rent for January 2021. I also find based on the evidence before me that the Tenants failed to pay rent to the Landlord for December 2020.

Accordingly, and pursuant to sections 26 and 67 of the Act, I award the Landlord with compensation from the Tenants of \$2,400.00 rent for each of December 2020 and January 2021, for a total monetary award of **\$4,800.00**.

Given her success in this Application, I also award the Landlord with recovery of the **\$100.00** Application filing fee for a total monetary award of \$4,900.00

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants’ security and pet damage deposits of \$2,400.00 in partial satisfaction of the Landlord’s monetary claim. I, therefore, authorize the Landlord to retain the Tenants security and pet damage deposits in partial satisfaction of the monetary award.

I grant the Landlord a Monetary Order from the Tenants for the remaining amount of the monetary award owing in the amount of **\$2,500.00**.

### Conclusion

The Landlord is successful in her Application for compensation from the Tenants, as the Landlord provided sufficient evidence to support her claim for \$4,800.00 from the Tenants. The Landlord is also awarded \$100.00 in reimbursement of her Application filing fee for this proceeding.

The Landlord is authorized to retain the Tenants’ \$1,200.00 security deposit and their \$1,200.00 pet damage deposit in partial satisfaction for the monetary award.

I grant the Landlord a Monetary Order under section 67 of the Act from the Tenants in the amount of **\$2,500.00**.

This Order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: April 30, 2021

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Residential Tenancy Branch