



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes** MNRL-S, MNDCL-S, MNDL-S, FFL

### **Introduction**

This hearing was reconvened from an adjourned hearing originally scheduled for May 10, 2021. I had adjourned the matter in order for the tenants to re-serve the landlords with their evidentiary materials.

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for compensation for unpaid rent, money owed, or monetary loss 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.

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. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenants confirmed receipt of the landlords' application ('Application'). In accordance with section 89 of the *Act*, I find that the tenants duly served with the Application. All parties confirmed receipt of each other's evidentiary materials, and the hearing proceeded.

### **Issue(s) to be Decided**

Are the landlords entitled to monetary compensation as requested for losses or money owed?

Are the landlords entitled to recover the filing fee for this application from the tenants?

### **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 this application and my findings around it are set out below.

This fixed term tenancy originally began on March 1, 2019, and continued on a month-to-month basis after 12 months. The tenants testified that they had vacated the rental unit on October 15, 2020. Monthly rent was set at \$2,800.00, payable on the first of the month. The landlords had collected a security deposit in the amount of \$1,400.00, which the landlords still hold.

At the original scheduled hearing date, the landlords' monetary claim was confirmed as follows:

<b>Item</b>	<b>Amount</b>
Unpaid Rent for October & November 2020	\$4,200.00
Repayment of requested Covid-19 relief	5,000.00
Cleaning of Cushions	277.92
Damage to porcelain tile floor	1,466.69
Recovery of Filing Fee	100.00
<b>Total Monetary Order Requested</b>	<b>\$11,044.61</b>

The landlords testified that they had received notice on September 12, 2020 that the tenants would be moving out on October 15, 2020, and that after that the tenants refused to communicate with them. The landlords testified that the tenants returned the keys to the neighbour, and afterwards the neighbour had informed the landlords on October 20, 2021 that the keys were available for pickup. The landlords testified that they entered the rental unit on October 22, 2020, and found the unit empty. The landlords testified that the tenants had only paid half of the rent for October 2020, and failed to repay the \$5,000.00 in rent relief the landlords had provided to the tenants. The landlords are seeking recovery of the unpaid rent, the covid relief, as well as lost rental income for November 2020. The landlords submitted a copy of a repayment plan that was signed by the landlords in September 2020, and testified that the tenants were never provided with a permanent rent reduction.

The landlords testified that they ended up listing the home instead of re-renting the rental unit, and sold the rental unit instead. The landlords testified that they had provided the rent relief with the understanding that the tenants would repay the \$5,000.00. The landlords are also seeking a monetary for the tenants' failure to leave the home in reasonably clean and undamaged condition. The landlords testified that the tenants had neglected the porcelain tile floors so badly that it cost the landlords \$1,466.69 to have the dirt and stains removed. The landlords also testified that the tenants did not take care of the patio furniture cushions, which cost the landlords \$277.92 to professionally clean. The landlords submitted photos and a receipt for the claims. The receipt submitted by the landlords note "some cushions damaged (torn areas) and badly stained".

The tenants do not dispute that they had given notice to vacate the rental unit on October 15, 2020, but that the landlords had initially agreed to allow the tenants to move out with less than thirty days notice in exchange for keeping the tenants' security deposit and returning the rental unit in move-in condition for November 1, 2020. The tenants testified that after they gave written notice on September 12, 2020, the landlords demanded back the \$5,000.00, which the tenants testified that the landlords had verbally agreed was a relief in rent that did not have to be paid back. The tenants testified that there was never any discussion of repayment when the landlords had agreed to provide the tenants with the relief.

The tenants testified that the landlords were hostile, and therefore the tenants ceased communication with the landlords as of September 12, 2020. The tenants testified that they had paid \$1,400.00 towards the October 2020 rent, and allowed the landlords to keep the security deposit in satisfaction of the remaining amount as previously agreed to.

The tenants dispute leaving the home in unreasonably clean or damaged condition, and testified that they had hired a professional cleaning company to clean the rental unit, and then left the keys with the neighbour before vacating the rental unit by October 15, 2020. The tenants submitted an invoice for the cleaning on October 1, 2020 in the amount of \$450.00 as well as photos, and a video of the cleaned rental unit.

### **Analysis**

Section 45 of the *Residential Tenancy Act* reads in part as follows:

#### **Tenant's notice**

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
  - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the tenants did not end this tenancy in a manner that complies with the *Act*, as stated above. The landlords did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this tenancy. The evidence is clear that the tenants did not comply with the *Act* in ending this periodic tenancy as they never gave notice in a manner required by section 45(1) of the *Act*. I, therefore, find that the tenants vacated the rental unit contrary to section 45 of the *Act*, and owe the entire monthly rent for October 2020. As the tenants had only paid \$1,400.00 for October 2020, the landlords are entitled to the remaining \$1,400.00 in outstanding rent, which may be offset in accordance with the offsetting provisions of section 72 of the *Act* by the security deposit still held by the landlords.

The landlords are also seeking a monetary loss of rent for the month of November 2020. The landlords testified that they had chosen to list the home for sale instead of re-renting it. I am not satisfied that the landlords had sufficiently supported this lost in rental income, and mitigated their losses as is required by section 7(2) of the *Act* as they sold the home instead. Accordingly, I dismiss the landlords' monetary claim for loss of rental income for the month of November 2020 without leave to reapply.

The landlords are seeking a monetary order for the \$5,000.00 in rental relief provided to the tenants. It is undisputed by both parties that a \$5,000.00 reduction in rent was provided to the tenants, although it is disputed between both parties as to whether repayment of the \$5,000.00 was required. The tenants testified that this was a permanent relief provided by the landlords, while the landlords testified that this was a temporary relief measure with the understanding that the tenants were to repay the full amount.

Section 26 of the *Act*, in part, states as follows:

**Rules about payment and non-payment of rent**

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

As set out in Residential Tenancy Policy Guideline #52 COVID-19: Repayment Plans and Related Measures, the referenced rent relief was for payment of rent that fell under the “affected rent” period of March 18, 2020 to August 17, 2020 as set out in the legislation and Ministerial Order. The tenants had the right under the Ministerial Order to make partial rent payments for the months of April 2020 through to July 2020, with protection from being evicted for non-payment of rent for this period, unless the tenants failed to comply with the repayment plan as set out in the Policy Guideline. As per the Policy Guideline and associated tenancy regulation, “a landlord must give a tenant a repayment plan if the tenant has unpaid affected rent, unless a prior agreement has been entered into and has not been cancelled. If the parties are no longer in a landlord-tenant relationship because the tenancy has ended, a repayment plan would not be required.”

In this case, the tenants had given notice that they would be ending the tenancy shortly after the affected period had ended, and before the landlords had served the tenants with the repayment plan. As noted above, a repayment plan is not required in the case that a party is no longer in a landlord-tenant relationship. The purpose of the Ministerial Order was to provide tenants with temporary rent relief without worry of eviction for unpaid rent, and the ability to repay the rent in manner that allowed the tenancy to continue. The expectation is that the entire outstanding amount becomes due when the tenancy is over, which in this case was the \$5,000.00 as the tenants moved out before entering into a repayment plan with the landlords. I am not satisfied that any other agreement was entered into by both parties which allowed the tenants to permanently deduct this amount, and accordingly, I order that the tenants repay the landlords the \$5,000.00 in rent relief that was provided during this tenancy.

The landlords are also seeking a monetary order for losses related to cleaning and damages. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on

the landlords to prove, on a balance of probabilities, that the tenants had caused damage and losses in the amounts claimed by the landlords.

In light of the disputed testimony and evidence before me, I am not satisfied that the landlords had sufficiently supported the claims made in relation to the flooring and cushions. I find that the tenants had provided contradictory evidence that they had thoroughly cleaned the rental unit, as shown by the video and cleaning invoice submitted. In the absence of any move-in inspection report, I have no way of ascertaining the true condition of the flooring and patio cushions at the beginning of this tenancy, and whether the damages claimed were due to wear and tear, or the negligent or deliberate actions of the tenants.

As noted in Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure*:

*6.6 The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.*

I find that the landlords failed to meet the standard of proof required to support their claims for the flooring and cushions. Accordingly, the landlords' claims are dismissed without leave to reapply.

As the landlords were partially successful with their claim, I allow the landlords to recover half of the filing fee for their application.

### **Conclusion**

I issue a \$350.00 Monetary Order in favour of the landlords as set out in the table below.

<b>Item</b>	<b>Amount</b>
Unpaid Rent for October	\$1,400.00
Repayment of requested Covid-19 relief	5,000.00
Recovery of Filing Fee	50.00
Less Security Deposit Held	-1,400.00
<b>Total Monetary Order</b>	<b>\$5,050.00</b>

The tenants must be served with this Order as soon as possible. Should the tenants 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 remainder of the 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: September 30, 2021

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Residential Tenancy Branch