



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, MNR, FF

### Introduction

A hearing was convened under the *Residential Tenancy Act* (the “Act”) to deal with the landlords’ application filed March 1, 2017, for compensation for damage or loss under the Act, regulation, or tenancy agreement, for damage to the rental unit, for unpaid rent, and for authorization to retain the tenants’ security deposit and recover the application filing fee.

Both of the landlords attended the hearing and were given a full opportunity to be heard, to present affirmed testimony and documentary evidence and to make submissions.

As the tenants did not attend, service of the landlord’s application and notice of hearing was considered. One of the landlords testified that she served the tenants by sending two copies of the materials by registered mail sent March 3, 2017 to the address to which they relocated after having been removed by a bailiff. The landlord provided a Canada Post address slip and tracking information in support. The tracking information showed that the mail was not claimed.

Based on the landlord’s affirmed testimony and the documentary evidence I accept that the tenants were served on March 8, 2017, five days after the registered mail was sent, in accordance with s. 90 of the Act. Refusal to claim registered mail does not override the deeming provisions of s. 90 of the Act. Nor does refusal to accept service constitute a ground for review under the Act.

### Issues to be Decided

Are the landlords entitled to compensation for unpaid rent?

Are the landlords entitled to compensation for damage to the rental unit and/or for breach of the Act, regulation, or tenancy agreement?

Are the landlords entitled to retain the security deposit?

Are the landlords entitled to recover the application filing fee?

### Background and Evidence

A copy of the tenancy agreement was in evidence. This tenancy began on June 1, 2016 for a term expiring May 31, 2017. Rent of \$1,330.00 was due on the first of each month. The agreement indicates that pets are not allowed and that garbage disposal is not included in the rent.

Although the tenancy agreement indicates that a security deposit of \$650.00 was required, the landlord advised that she had collected only \$500.00, because the tenants argued that the unit was not sufficiently clean when they moved in and asked that the deposit amount be reduced accordingly. The landlords continue to hold the security deposit of \$500.00.

The landlords did not conduct condition inspection reports at move-in or move-out. The landlords were reminded of the requirement under the Act and regulation that they do so.

The landlords testified that they have already obtained an order of possession and a monetary order for January's rent, and were required to hire a bailiff to remove the tenants. The tenants were removed on February 17, 2017. A copy of the bailiff's report was in evidence. It records the address to which the tenants were relocated. It also records that the tenants had two dogs and a cat.

The landlord testified that the rental unit was very dirty. She said that the tenants had pets in breach of the tenancy agreement, and that the carpets had to be cleaned to remove pet hair and smell. The landlord further said that the yard was littered with dog feces and someone had to be hired to clean it up.

Residents of that area do not have municipal garbage pick-up and are required to pay for their own garbage service or remove their household waste themselves. The landlord testified that these tenants appeared not to have removed their household garbage over the eight months of the tenancy. The landlords were required to remove and dispose of "what appeared to be 8 months worth of rat infested household garbage hidden under tarps & in storage room under the deck."

The landlord also stated that many large items were left behind which could not be moved without a trailer.

Lastly, the landlord testified that the walls in the main floor and the basement had to be repaired and repainted as a result of picture holes and shelving.

The landlords spent approximately 20 hours of their own time cleaning, removing garbage, and painting. However, they are not claiming the cost of their own time.

The landlords claim prorated rent for the first half of February, before the tenants were removed by the bailiff. They also claim bailiff fees, including moving fees, and court registry fees. They further claim for the costs associated with rekeying the locks, disposing of garbage, and paying others for assistance cleaning the rental unit at a rate of \$20.00/hour. Lastly, the landlords seek reimbursement for labour and materials for painting the rental unit. Receipts for all of the claims were provided.

### Analysis

The landlords provided undisputed affirmed testimony and documentary evidence as the tenants did not attend. I accept that the landlords were required to resort to a bailiff to remove these tenants, and I find that the tenants are responsible for the bailiff and moving costs as claimed. The tenants' failure to vacate as required by the order of possession represents a breach of the Act that has caused the landlords to suffer loss (the bailiff and moving fees).

I also accept that the tenants occupied the rental unit for the first half of February and that it is appropriate that they pay rent on a prorated basis for that time.

I also accept the landlords' testimony as to the state of the rental unit and I find that the cleaning and the extensive garbage disposal were necessary in light of the tenants' failure to remove their garbage, clean the rental unit, and pick up after their dogs. Accordingly, I award the landlords the amounts they have claimed for cleaning and garbage disposal.

However, I do not award the landlords materials or labour costs for painting the rental unit. As set out in RTB Policy Guideline #1, landlords are generally required to repaint the rental unit at reasonable intervals, and the landlords here did not establish that repainting at this interval was unreasonable.

The landlord has submitted a receipt for labour by AL for 450.00, representing the cost of 25 hours of AL's labour at \$20.00 per hour, including the use of a trailer. At the hearing the landlord advised that approximately 10 of the 25 hours claimed were spent painting. Accordingly, I award only \$300.00 of the \$500.00 claimed (the cleaning but not the painting costs). I do not award the landlords the amounts claimed for painting supplies at #19-21 of their monetary order worksheet.

As the landlords were successful in this application, they are also entitled to recover the \$100.00 filing fee.

Sections 24 and 36 of the Act provide that a landlord who does not comply with the requirements around condition inspection reports extinguishes its right to claim against the security deposit for damages. Although these landlords have not complied with sections 23 and 35 of the Act with respect to condition inspection reports, the Act does not provide that they have extinguished their right to claim against the security deposit for unpaid rent. Accordingly, I authorize and order the landlords to retain the tenant's security deposit of \$500.00 in partial satisfaction of their award for unpaid rent.

Based on the above, I issue a monetary order against the tenants as follows:

<b>Item</b>	<b>Amount</b>
Bailiff fees (including movers)	\$3,554.61
Rent February 1-16	\$743.00
Court registry fees	\$120.00
Rekeying locks	\$82.88
Garbage disposal (total of 6 receipts)	\$131.11
Cleaning (total of KS, KP and KP receipts)	\$240.00
Cleaning (AL receipt less 10 hours spent painting)	\$300.00
Cleaning supplies (total of two receipts)	\$31.26
Carpet cleaning	\$136.50
Filing fee	\$100.00
Less security deposit	-\$500.00
<b>Total</b>	<b>\$4,939.36</b>

Conclusion

I issue a monetary order for the landlords in the terms set out above, which allow the landlords to obtain the compensation to which I have found they are entitled and to retain the security deposit against unpaid rent.

The tenants must be served with this order as soon as possible. Should the tenants fail to comply with this order, it 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 Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: August 08, 2017

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Residential Tenancy Branch