



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S, MNDL-S, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for damage to the rental unit, money owed or damage or loss under the Act, regulation, or tenancy agreement, and recovery of the filing fee, as well as retention of the Tenant’s security deposit and pet damage deposit.

The hearing was convened by telephone conference call and was attended by Landlord, who provided affirmed testimony. The Tenant did not attend. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as explained below.

The Landlord testified that the Tenant vacated the premises without providing a forwarding address and that she was required to hire three separate companies in order to locate him. The Landlord stated that she obtained his address through one of the companies and that the Application, Notice of Hearing and copies of her evidence were sent to the Tenant at that address on March 6, 2018. The Landlord stated that the Application, Notice of Hearing, and original evidence were sent by registered mail to the Tenant again on April 16, 2018, along with additional evidence from the Landlord. The Landlord provided me with the registered mail tracking numbers and with her consent, I logged into the mail service providers website and verified that the registered mail package sent to the Tenant on April 13, 2018, was picked up and signed for by the Tenant on April 16, 2018. Based on the above, I am satisfied that the Tenant was served the copies of the Application, Notice of hearing, and the evidence before me for consideration on April 16, 2018.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure. However, I refer only to the relevant facts and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in her favor will be e-mailed to her at the e-mail address provided by her in the online application system.

### Preliminary Matters

#### **Preliminary Matter #1**

At the start of the hearing there was some question as to whether the Landlord had made her Application within the applicable legislative time frame. Section 60(1) of the *Act* states that if the *Act* does not state a time by which an application for dispute resolution must be made, it must be made within two years of the date that the tenancy to which the matter relates ends or is assigned.

The Landlord stated that on August 13, 2015, she served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") which the Tenant did not dispute. The effective date of the Two Month Notice in the documentary evidence before me is October 15, 2015, but the Landlord stated that the Tenant requested additional time to move out and a mutual agreement was reached to change the effective date of the Two Month Notice to November 1, 2015.

Based on the above, I find that the tenancy ended on November 1, 2015. As the Landlord filed her Application and paid the required filing fee on October 2, 2017, I find that the Landlord applied within the two year legislative timeframe required under section 60(1) of the *Act* and the hearing proceeded as scheduled.

#### **Preliminary Matter #2**

The Landlord testified that the address for the Tenant has changed since the filing of the Application and provided me with the correct address. In support of this testimony the Landlord supplied documentary evidence from a company she hired to find the Tenant which confirms the Tenant's current address. Further to this, the Landlord testified that the Application, Notice of Hearing, and her evidence package were sent by registered mail to the tenant at this address on April 13, 2018, and as sated above, I confirmed via the mail service provider's website that this mail was picked up and signed for by the

Tenant on April 16, 2018. As a result, I accept the Landlord's testimony that this is the current and correct address for the Tenant and the Application has been amended accordingly.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order for damage to the rental unit, money owed or damage or loss under the *Act*, regulation, or tenancy agreement, and recovery of the filing fee?

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit and pet damage deposit?

Background and Evidence

The Landlord testified that the tenancy began on approximately December 1, 2011, at a monthly rent amount of \$1,950.00. The Landlord stated that a security deposit of \$975.00 and a pet damage deposit of \$975.00 were paid, which the Landlord still holds. The Landlord stated that she is the owner of the property and that she served a Two Month Notice on the Tenant on August 13, 2015, so that she could move into the rental unit and provided me with a copy of the Two Month Notice. The Landlord stated that the Tenant did not dispute the two month notice and moved out sometime on or before November 1, 2015. However, the Landlord stated that she could not move into the rental unit as scheduled on November 1, 2015, due to the state of the property and that the Tenant failed to provide a forwarding address in writing.

The Landlord stated that the Tenant left the property in very bad shape and submitted photographic evidence and the condition move-in and move-out inspection reports in support of her testimony. The Landlord stated that the Tenant attended the move-in inspection and signed the inspection report, however, despite at least three attempts to schedule a move-out inspection with the tenant, he refused to co-operate and did not attend. As a result, the Landlord testified that the move-out condition inspection was completed in his absence in accordance with the *Act*.

The Landlord testified that the Tenant is a care or support worker and that one of his clients, who resided with the Tenant, sometimes urinated on the floors. As a result, the Tenant removed the carpet from his client's room and laid his own flooring. The Landlord stated that at the end of the tenancy this flooring and the sub floor under it was damaged by urine and needed to be replaced. The original carpet, which was removed

by the Tenant, could not be re-used as the Landlord stated the Tenant had given it to a friend. As a result, the Landlord stated that the subflooring in one room needed to be replaced and that new flooring needed to be laid at a cost of \$1,310.00. The Landlord submitted a quote for the cost of these repairs.

The Landlord also sought \$360.00 in cleaning costs as the unit was not clean at the end of the tenancy, \$75.00 in key replacements costs as the tenant failed to return three sets of keys, \$200.00 for garbage removal, \$513.24 in carpet replacement costs, \$2,488.88 for the cost of repairing and repainting damaged walls, and \$1,361.49 for the cost of replacing a damaged exterior door and door frame. In support of these claims the Landlord submitted documentary evidence of the damage and quotes for the cost of repairs. The Landlord also sought \$2,000.00 in alternate accommodation costs as she was unable to move into the rental unit as scheduled.

The Tenant did not appear at the hearing to provide any evidence or testimony for my consideration.

### Analysis

Section 37 of the Act states 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, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Section 65(1)(d) of the *Act* states that if the director finds that a landlord or a tenant has not complied with the *Act*, regulation, or tenancy agreement, the director may order that any money owing by a tenant or a landlord be repaid.

Based on the documentary evidence before me and the Landlord's undisputed testimony, I find that the Tenant, or persons permitted on the property by the Tenant, damaged the walls, the carpet on the stairs, the flooring in one bedroom and the exterior door. I also find that the Tenant failed to leave the rental unit in a reasonable state of cleanliness at the end of the tenancy and to return three sets of keys.

Residential Tenancy Policy Guideline (the "Policy Guideline") #40 states that the useful life of building elements is as follows: exterior doors are 20 years, carpets are 10 years, interior paint is four years, and drywall is 20 years. The Landlord testified that the exterior door was 7 years old and I find that the door was therefore well within its useful

life. Further to this, I find that the damage was so severe that it no longer functioned properly. As a result, I find that the Landlord is entitled to \$1,361.49 for the cost of replacing the damaged exterior door and door frame.

Although the useful life expectancy of the interior paint had passed as the rental unit was painted just prior to the six year tenancy, the testimony and documentary evidence before me indicates that the primary reason for the need to paint is drywall damage. As the useful life of drywall is 20 years, I find that the need for drywall repair and painting is reasonable and the Landlord is therefore entitled to the \$2,488.88 sought for these costs.

Although the useful life expectancy of the carpet in the rental unit, which was installed 13 years prior to the end of the tenancy, had passed, the Landlord testified that it was in excellent condition at the start of the tenancy. Further to this, she submitted documentary evidence of its very poor condition at the end of the tenancy. Based on the above, and despite the fact that the carpet was beyond its useful life expectancy, I award the Landlord a nominal amount of \$250.00 in acknowledgement of the carpet damage. I also find that the Landlord is entitled to \$200.00 for the cost of garbage removal, \$360.00 for cleaning costs, and \$75.00 for the replacement of three sets of keys.

Based on the documentary evidence and testimony before me, I am satisfied that the flooring and sub-flooring in one bedroom required replacement due to damage by the Tenant, or a person permitted on the property by the Tenant, and that the original flooring removed by the Tenant could not be replaced. As a result, the Landlord is entitled to the \$1,310.00 sought. I also accept the Landlord's undisputed testimony and documentary evidence that she suffered a loss as a result of the need to find two months of alternate accommodation due to the state of the rental unit at the end of the tenancy and I find that she is therefore entitled to the \$2,000.00 sought for these costs.

Pursuant to section 72 of the *Act*, the Landlord is also entitled to the recovery of the \$100.00 filing fee.

Although the Landlord applied to retain the security deposit and pet damage deposit paid by the Tenant against the damages sought, she also testified that the Tenant never provided her with a forwarding address. Section 39 of the *Act* states that despite any other provision of the *Act*, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy, the landlord may keep the security deposit or pet damage deposit, or both, and the right of the tenant to the return of the

security deposit or pet damage deposit is extinguished. Based on the undisputed testimony of the Landlord and pursuant to section 39 of the *Act*, I find that the Landlord was therefore entitled to retain the security deposit and the pet damage deposit paid by the Tenant in full, one year after the end of the tenancy. As a result, I find there is no security deposit or pet damage deposit to set-off the above noted debt owed by the Tenant to the Landlord.

Based on the above and pursuant to section 67 of the *Act*, the Landlord is therefore entitled to a Monetary Order in the amount of \$8,144.49.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$8,144.49. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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 3, 2018

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Residential Tenancy Branch