



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      FFT MNSD FFL MNDL-S MNRL-S

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- a monetary order for damage to the unit, site, or property, or for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord 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.

The landlord had served the tenants with his application for dispute resolution by way of registered mail on October 25, 2017. The tenants testified that they had served the landlord their application for dispute resolution by way of registered mail on April 23, 2017. Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenants were duly served with the Applications and evidence.

**Issue(s) to be Decided**

Are the tenants entitled to the return of their security deposit?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

Is the landlord entitled to a monetary order for unpaid rent, or damage, and for losses associated with this tenancy?

**Background and Evidence**

This fixed-term tenancy began on May 1, 2011 and was to end on July 1, 2017 per the newest tenancy agreement signed on July 8, 2016. Monthly rent was set at \$1,600.00. The tenants testified that the landlord had collected a security deposit and pet damage deposit of \$700.00 each, and an additional \$100.00 was paid towards the security deposit when the new tenancy agreement was signed. The new tenancy agreement, dated July 8, 2016, indicates a security deposit of \$800.00. The landlord testified that he had only collected a security deposit of \$700.00, and still holds both deposits totalling \$1,400.00. The tenants testified that they had moved out on May 1, 2017 by way of mutual agreement of both parties, while the landlord testified that he was not given any formal notice that the tenants would be moving out, and was returned the keys on May 6, 2017. The tenants are requesting the return of both of their deposits, as well as compensation for the landlord's failure to return their deposits in accordance with section 38 of the *Act*.

The tenants testified that communication between both parties was by text message, and no formal mutual agreement to end tenancy was ever signed. The tenants testified that they had provided their forwarding address to the landlord on May 6, 2017, the date the keys were returned. The tenants testified that they had followed up with a text message on May 23, 2017. The landlord testified that he had never mutually agreed to end this tenancy early in writing, and that he never received the tenants' forwarding address in writing. The landlord provided a copy of the tenancy agreements as well as the move-in inspection in his evidence. The landlord testified that no move-out inspection was completed as the tenants had moved out without his knowledge.

The landlord is seeking the following compensation for losses associated with this tenancy.

Item	Amount
Repairs & Renovations	\$3,400.00
Flooring	1,964.00
2 Months of lost rental income	3,200.00
<b>Total Monetary Order Requested</b>	<b>\$8,564.00</b>

The landlord is seeking \$3,200.00 in lost rental income as the tenants failed to give proper written notice that they were moving out. The landlord did not re-rent the suite after the tenants had moved out, and failed to pay rent for May 2017. The tenants admit that they had only paid rent for April 2017, and nothing for May 2017.

The landlord is also seeking compensation for the damage the tenants left when they had moved out. The landlord testified that the home was renovated 6 months before the tenants had moved in, in May of 2011. The landlord testified that when the tenants moved out the floors smelled like dog urine, throughout the house, and the flooring had to be completely replaced. The tenants admit that there was some damage, but the damage was limited to the baseboards of the home.

### **Analysis**

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. When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 44 of the *Residential Tenancy Act* reads in part as follows:

**44** (1) A tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...
- (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

**45** (2) A tenant may end a fixed term 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,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 of the *Act* provides the following requirements requiring the form and content of notices to end tenancy:

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,

- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Although the tenants testified that they had moved out pursuant to a Mutual Agreement by both parties, the tenants did not provide sufficient evidence to support that a Mutual Agreement that complies with section 52 of the *Act* was ever signed. I find that the tenants moved out prior to the end of this fixed term tenancy, in a manner that does not comply with the *Act*, as stated above. The landlord 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 fixed term tenancy. The tenants moved out approximately two months earlier than the date specified in the tenancy agreement.

It was also undisputed that a move-out inspection was not completed due to the manner in which this tenancy had ended. Although the tenants testified that they had moved out on May 1, 2017, the landlord testified that they were unaware that the tenants had moved out until May 6, 2017, when the keys were returned to the landlord.

The landlords testified in the hearing that no efforts were made to obtain a new tenant after the tenants had moved out. Despite the fact that the tenants had moved out in a manner that did not comply with the *Act*, I must consider whether the landlord has sufficiently mitigated their damages. I am not satisfied that the landlord had made any effort to mitigate the tenants' exposure to the landlord's monetary loss of rent for May and June 2017, as is required by section 7(2) of the *Act*. I, therefore, dismiss the landlord's monetary claim for two months' rent on this basis.

Whether or not the tenants remained in the rental unit until May 1, 2017 or May 6, 2017, there is undisputed sworn testimony that the tenants did remain in the rental unit beyond April 30, 2017 and failed to pay any rent for May 2017. I accept the testimony of the landlord that this tenancy ended on May 6, 2017 when the tenants had returned the keys to the landlord. As I find that the tenants failed to provide sufficient evidence to demonstrate that the landlord was given any written notice that this tenancy was going to end before term of the tenancy agreement, and as I find that the tenants remained in the rental unit until May 2017 while failing to pay any rent for May 2017 as required by section 26 of the *Act*, I find that the landlord is entitled to \$1,600.00 the unpaid rent for May 2017.

Section 37(2)(a) of the *Act* stipulates 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. The tenants admit that the baseboards were damaged when they vacated the suite, but not to the extent that the landlord had testified to. I find that the landlord provided sufficient evidence to show that the tenants did not take reasonable care and attention when vacating the suite. I find that the landlord complied with sections 23 of the *Act* by performing a condition inspection for the move-in, and I accept the testimony of the landlord that they were unable to perform an inspection at the end due to the tenants' failure to give proper notice that they had vacated the unit. I also find that the landlord supported their claims with receipts and pictures. Accordingly, I find the landlord is entitled to compensation for the tenants' failure to comply with section 37 of the *Act*.

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the floors. As per this policy, the useful life of flooring is 10 years. The rental unit was renovated 6 months before the tenants moved in and therefore at the end of the tenancy the flooring had approximately 3 years and 5 months of useful life left. The approximate prorated value of the remainder of the useful life of the interior painting is \$671.03. ( $\$1,964.00/120 \times 41$ ). Accordingly, I find the landlord is entitled to \$671.03 for the flooring.

The landlord also submitted a \$3,400.00 monetary claim for renovations and repairs. The invoice submitted by the landlord included the labour for the removal and installation of the new floors, as well as lighting fixtures and bathroom vanities (materials and labour). I am not satisfied that the landlord has provided sufficient evidence to demonstrate that this entire claim is due to the tenant's failure to comply with section 37(2)(a) of the *Act*. The invoice submitted by the landlord only provides one universal figure for all the work provided for repairs and renovations, and on this basis I find that the landlord failed to support the actual value of the loss attributed to the tenants. Accordingly, this portion of the landlord's monetary claim is dismissed without leave to reapply.

The landlord is granted a monetary claim of \$671.03 for the tenant's failure to comply with section 37(2)(a) of the *Act*.

The tenants testified that the landlord had collected an additional \$100.00 for the security deposit when the new tenancy agreement was signed. I find that the tenancy agreement signed on July 8, 2016 indicates a security deposit of \$800.00, which reflects the additional \$100.00. Accordingly, I accept the tenants' testimony that the landlord still holds \$800.00 for the tenant's security deposit and \$700.00 of the pet damage deposit.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security and pet damage deposits in satisfaction of the monetary claim.

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

RTB Policy Guideline 17, paragraph 10 establishes the following:

*The landlord has fifteen days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit plus interest to the tenant.*

The tenants had applied for the return of their security and pet damage deposits, but the tenants failed to provide sufficient evidence to support that a forwarding address was provided to the landlord in writing. The tenants provided a forwarding address to the landlord by way of text message, which does not satisfy the requirement of section 38 of the *Act*. Accordingly, the tenant's application for monetary compensation associated with the landlord's failure to comply with section 38 of the *Act* is dismissed without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application. The tenants must bear the cost of this filing fee.

As the landlord was partially successful in their monetary claim, I find that the landlord is entitled to recover half of the filing fee for their application.

## **Conclusion**

The tenants' entire application is dismissed without leave to reapply.

I issue a Monetary Order in the amount of \$821.03 in the landlord's favour for compensation for the flooring, unpaid rent, as well as half of the filing fee. I allow the landlord to retain the security and pet damage deposit in satisfaction of the monetary award. The landlord is provided with this Order in the above terms and the tenant(s)

must be served with a copy of 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.

<b>Item</b>	<b>Amount</b>
Flooring	\$671.03
Unpaid Rent for May 2017	1,600.00
Filing Fee	50.00
Less Security and Pet Damage Deposit	-1,500.00
<b>Total Monetary Order</b>	<b>\$821.03</b>

The remaining portion of the landlord's 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: July 3, 2018

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**Residential Tenancy Branch**