



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes FFL, MNDL-S, MNRL-S

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on May 16, 2018 (the "Application"). The Landlord sought compensation for damage to the rental unit, to recover money for unpaid rent and reimbursement for the filing fee. The Landlord sought to keep the security and pet damage deposits.

The Landlord appeared at the hearing. The Tenants did not appear. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlord provided the correct spelling for the city in the rental unit address and of Tenant N.A.'s first name and I amended the Application accordingly. These amendments are reflected in the style of cause.

The Landlord had submitted evidence prior to the hearing. The Tenants had not submitted evidence. I addressed service of the hearing package and Landlord's evidence.

The Landlord testified that he sent the hearing package and some of the evidence, including the Condition Inspection Report, to each Tenant by Xpresspost on May 18, 2018. The Landlord had submitted Xpresspost receipts as evidence. The receipts are addressed to the Tenants. The receipts include the Forwarding Address of the Tenants' as indicated on the front page of this decision. The Landlord testified he received the Forwarding Address from Tenant C.A. over the phone May 11, 2018. The Landlord testified Tenant C.A. said it was the forwarding address for both Tenants. The receipts include Tracking Number 1 for Tenant N.A. and Tracking Number 2 for Tenant C.A. as indicated on the front page of this decision.

With the permission of the Landlord, I looked the tracking numbers up on the Canada Post website. For Tracking Number 1, the website shows the package was delivered May 28, 2018. For Tracking Number 2, the website shows the package was delivered May 22, 2018. There is no signatory name for either package.

The Landlord testified that he sent a second package to each Tenant with the remainder of the evidence. He thought he did this May 28, 2018. He testified he sent these by Xpresspost or registered mail to the Forwarding Address. He was unable to find the tracking numbers for these. The Landlord said he uploaded Xpresspost receipts for these; however, I did not receive these in the uploaded evidence.

I accept the undisputed testimony of the Landlord as outlined above and find the hearing packages and evidence were served on the Tenants by registered mail to the Tenants' forwarding address in accordance with sections 88(d) and 89(1)(d) of the *Residential Tenancy Act* (the "Act"). This is supported

by the Xpresspost receipts and information on the Canada Post website. Based on the undisputed testimony of the Landlord regarding when the hearing packages and evidence were sent, I find these were sent in accordance with section 59(3) of the *Act* and rule 3.1 of the Rules of Procedure. Further, I find the second packages of evidence were sent in accordance with section 88(d) of the *Act* and in sufficient time to allow the Tenants to prepare for, and appear, at the hearing.

As I was satisfied with service, I proceeded with the hearing in the absence of the Tenants. The Landlord was given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence submitted and all oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to compensation for unpaid rent?
3. Is the Landlord entitled to keep the security and pet damage deposits?

### Background and Evidence

The Landlord submitted a written tenancy agreement as evidence. It is between the Landlord and Tenants regarding the rental unit. The tenancy started September 1, 2017 and was for a 10-month term. The rent was \$935.00 per month due on or before the first day of each month. The agreement includes a clause that is inconsistent with the 10-month term starting September 1, 2017. The Landlord confirmed that it was agreed between the parties and understood that the tenancy would start September 1, 2017 and be for a 10-month term. The agreement is signed by the Landlord and Tenant N.A.

The tenancy agreement includes a term stating, "[e]lectricity not including electric heat \$95 paid by tenant with the rent". The Landlord testified that this \$95.00 was a flat rate per month. He said the Tenants were not provided with bills for the utilities, it was expected they would pay this \$95.00 each month with the rent.

The Landlord testified that the Tenants paid a \$465.00 security deposit at the start of the tenancy. He said he still has the entire deposit. He testified the Tenants paid a \$200.00 pet damage deposit April 4, 2018. He said he still has the entire pet deposit.

The Landlord testified the Tenants moved out of the rental unit May 1, 2018.

### ***Damage to the unit***

The Landlord requested \$275.00 compensation for damage to the carpet in the rental unit including two stains and a rip.

The Landlord testified that the Tenants did not provide their forwarding address in writing but did so verbally over the phone May 11, 2018. The Landlord confirmed he filed the Application May 16, 2018.

I asked the Landlord if the Tenants had agreed in writing that he could keep some or all of the security or pet damage deposits. He pointed to a note on the Condition Inspection Report submitted as evidence. The note states, "Tenant Agree for Landlord to hold Security Deposit till suit [sic] rents and Landlord agrees send all remaining funds". The Landlord testified that Tenant N.A. signed the Condition Inspection Report on move-out. The Landlord said the Tenants originally paid rent for May. He testified that him and Tenant N.A. agreed that he could keep the \$465.00 security deposit if he could not re-rent the unit for June 1, 2018 and that he would return it if he did re-rent the unit.

The Landlord testified as follows in relation to a move-in inspection. He and Tenant N.A. did the inspection September 2, 2017. The unit was empty. Both signed the Condition Inspection Report. He gave the Tenants a copy of the report September 2, 2017 personally.

The Landlord testified as follows in relation to a move-out inspection. He and Tenant N.A. did the inspection May 1, 2018. The unit was empty. Both signed the Condition Inspection Report. He went to copy the report on May 1, 2018 and when he came back to the unit Tenant N.A. was gone. He posted the report on the door of the unit because Tenant N.A. had said she was coming back for something.

The Condition Inspection Report does not have condition codes on each line provided for each part of the unit. There are check marks indicating "good" under each room. The Landlord testified these were done

on move-in. Tenant N.A. indicated she agreed with the report on move-in and signed the report. There are no condition codes under the move-out column. Under "End Of Tenancy" the report states, "carpet stained and torn by cats" under damage that the tenant is responsible for. It is indicated that Tenant N.A. agrees with the report and Tenant N.A. signed it on move-out.

The Landlord submitted photos of two stains and a rip in the carpet. He testified as follows in relation to the damage. He has tried to fix the stains. He spent \$75.00 to have the carpet shampooed; however, the stains did not come out. The rip cannot be fixed as the carpet cannot be matched or patched. He must replace the carpet. He has not replaced the carpet yet.

The Landlord submitted that the damage to the carpet is not reasonable wear and tear. He said the carpet is torn right to the subfloor. He said this would not have happened if the Tenants did not have cats that tore at the carpet. The Landlord said he understands that stains happen but that they should come out if attended to in the proper way. He said the Tenants were negligent in not taking appropriate care of the carpet.

The Landlord submitted that the amount requested for the damage to the carpet is modest. He said he is requesting \$275.00 as the depreciated value of the carpet. The Landlord said it will cost him \$675.00 to replace the carpet. He testified that the carpet is three years old so he has had three years of use so believes \$275.00 is a reasonable amount. He said the \$675.00 is a verbal estimate he received from the flooring department at a building store. The Landlord said he submitted an invoice for the carpet cleaning; however, I did not receive this in the uploaded evidence.

### ***Unpaid Rent***

The Landlord testified as follows in relation to his request for unpaid rent. The Tenants breached the tenancy agreement by ending the tenancy before the 10-month term expired. The Tenants told him they understood they were leaving early and were responsible for the rent. The Tenants had given him a cheque for May rent near the end of the tenancy; however, the cheque was cancelled. He is requesting the \$935.00 for rent plus \$95.00 for utilities for May.

In relation to the end of the tenancy, the Landlord testified that the Tenants called him and told him they wanted to end the tenancy early. He said the Tenants gave notice April 1, 2018. He said he told the Tenants he would start advertising the unit but that they were responsible for rent until the end of the term unless he re-rented the unit. He testified that he posted ads for the unit April 3, 2018 on two rental websites and in five papers. The Landlord testified that he hired someone to watch the ads and re-post them when necessary. He said the unit was advertised for \$1,035.00 rent. The Landlord said he rented the unit for June 1, 2018.

The Landlord submitted documentation showing the May rent cheque was cancelled.

### **Analysis**

Based on the undisputed testimony of the Landlord regarding the move-in and move-out inspections, I find the Tenants did not extinguish their right to the return of the security or pet damage deposits under sections 24(1) or 36(1) of the *Act*.

Based on the undisputed testimony of the Landlord regarding the move-in and move-out inspections, I find he did not extinguish his right to claim against the security or pet damage deposits under sections 24(2) or 36(2) of the *Act*. I find the Landlord complied with his obligations under section 18 of the *Residential Tenancy Regulation* (the "*Regulations*") regarding giving the Tenants a copy of the Condition Inspection Report. I accept the Landlord's undisputed testimony that Tenant C.A. provided the Tenants' forwarding address May 11, 2018. I accept the Landlord's undisputed testimony that he sent the Tenants a copy of the Condition Inspection Report as part of the first evidence package in relation to this hearing on May 18, 2018 by registered mail. Therefore, the Landlord served the Tenants with a copy of the Condition Inspection Report in accordance with section 88(d) of the *Act* within 15 days of receiving the Tenants' forwarding address as required by section 18 of the *Regulations*.

I accept the Landlord's undisputed testimony that he filed the Application May 16, 2018. This is what the Residential Tenancy Branch records show. Therefore, I find the Landlord applied for dispute resolution to keep the security and pet damage deposits within 15 days of receiving the Tenants' forwarding address as required under section 38 of the *Act*.

Section 7 of the *Act* states:

- (1) If a...tenant does not comply with this *Act*...or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.
- (2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance...must do whatever is reasonable to minimize the damage or loss.

Section 37 of the *Act* addresses tenant's obligations upon vacating a rental unit and states:

- (2) When a tenant vacates a rental unit, the tenant must
  - (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

### ***Damage to the unit***

Based on the Condition Inspection Report, I accept that the rental unit was in good condition upon move-in. There is no indication on the report that there were stains or rips in the carpet upon move-in. I find Tenant N.A. indicated she agreed with the report and signed it.

Based on the undisputed testimony of the Landlord, the Condition Inspection Report and the photos submitted, I find the Tenants left two stains on the carpet and ripped it. The Condition Inspection Report states this. I find Tenant N.A. indicated she agreed with the report and signed it.

I accept the submission of the Landlord that the rip is not reasonable wear and tear. I accept the undisputed testimony of the Landlord that the carpet is only three years old. Although the rip is not large, it goes through to the subfloor and looks like a chunk of the carpet has been ripped off. This is beyond normal wear and tear that may result from normal use of a carpet, particularly a carpet that is only three years old. I note that Policy Guideline 40 states that the useful life of carpet is 10 years. I find the Tenants breached section 37 of the *Act* by leaving the carpet damaged.

I accept the undisputed testimony of the Landlord that the rip cannot be fixed and that the carpet must be replaced. I accept the undisputed testimony of the Landlord that it will cost \$675.00 to replace the carpet. The Landlord is only requesting \$275.00 compensation for the carpet. I find this amount to be more than reasonable given the age of the carpet and the cost of replacing it. I find the Landlord is entitled to compensation in this amount.

### ***Unpaid Rent***

Based on the undisputed testimony of the Landlord, and the written tenancy agreement, I find the tenancy was a 10-month fixed term tenancy starting September 1, 2017 and ending at the end of June 2018. I accept the undisputed testimony of the Landlord and find the Tenants gave notice to end the tenancy April 1, 2018 and moved out May 1, 2018. I find the Tenants breached the tenancy agreement and section 45(2) of the *Act* by ending the fixed term tenancy early.

I accept the undisputed testimony of the Landlord that the Tenants cancelled their rent cheque for May. This is supported by the documentation submitted. I accept the undisputed testimony of the Landlord that he re-rented the rental unit for June 1, 2018. Based on the undisputed testimony of the Landlord, and the written tenancy agreement, I find the Landlord lost \$935.00 in rent for May due to the Tenants ending the fixed term tenancy early. I do not find that the Landlord lost \$95.00 for utilities in May as the Tenants were not in the rental unit in May and therefore were not using utilities.

I find the Landlord did act reasonably to minimize his loss. I accept the undisputed testimony of the Landlord that he posted the rental unit for rent April 3, 2018, two days after receiving notice from the Tenants. Although he increased the rent, he did so by \$100.00 which in my view is minimal. Here, the Landlord is only requesting rent for May, the month after the Tenants gave notice. In my view, the Landlord is entitled to compensation for May rent in the circumstances.

In summary, I find the Landlord is entitled to \$1,210.00 being \$275.00 compensation for the carpet and \$935.00 compensation for May rent.

Given the Landlord was successful in this application, I grant the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$1,310.00. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep both the security and pet damage deposit in the amount of \$665.00. The Landlord is entitled to a further Monetary Order in the amount of \$645.00.

Conclusion

The Application is granted in part. The Landlord is entitled to \$1,310.00.

The Landlord is authorized to keep both the security and pet damage deposit in the amount of \$665.00.

The Landlord is entitled to a Monetary Order in the amount of \$645.00. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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*.

Dated: July 09, 2018

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Residential Tenancy Branch