



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, MNDCL-S, MNDL-S

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on June 14, 2018 (the “Application”). The Landlords sought compensation for damage to the rental unit, compensation for monetary loss or other money owed and reimbursement for the filing fee. The Landlords sought to keep the security deposit.

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

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose in this regard.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Are the Landlords entitled to compensation for damage to the rental unit?
2. Are the Landlords entitled to compensation for monetary loss or other money owed?
3. Are the Landlords entitled to keep the security deposit?
4. Are the Landlords entitled to reimbursement for the filing fee?

### Background and Evidence

The Landlords sought \$2,170.00 in compensation as follows:

1. \$700.00 security deposit for cleaning and damage to the rental unit comprised of the following:
  - a. Cleaning \$313.95
  - b. Painting supplies \$123.62
  - c. Painting \$200.00
  - d. Blind cleaning \$161.31
2. \$1,470.00 for loss of rent

A written tenancy agreement was submitted as evidence. It is between the Landlords and Tenant in relation to the rental unit. The tenancy started August 31, 2016 and was for a fixed term ending August 31, 2017. The rent was \$1,400.00 due on the first day of each month. The Tenant paid a \$700.00 security deposit and \$700.00 pet deposit. The agreement is signed by the parties.

The parties agreed the Tenant vacated the rental unit May 31, 2018. The Landlord testified that she still holds the deposits. The Landlord said she was only seeking to keep the security deposit because there was no damage caused by a pet.

The parties agreed on the following. The Landlords received the Tenant's forwarding address in writing May 31, 2018. The Landlords did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlords could keep some or all of the security deposit.

The parties agreed on the following in relation to a move-in inspection. The parties did the inspection August 30, 2016. The unit was empty. A Condition Inspection Report was completed and signed by both parties.

The Tenant testified that she received a copy of the move-in Condition Inspection Report in person within a week of the inspection.

The parties agreed on the following in relation to a move-out inspection. The parties did the inspection May 31, 2018. The unit was empty. A Condition Inspection Report was

completed and signed by the Landlord. The Tenant did not sign the report because she did not agree with it. The Tenant was sent a copy of the move-out Condition Inspection Report by email within 15 days of the inspection.

***Cleaning \$313.95***

The Landlord testified as follows in relation to cleaning. The Tenant left numerous areas of the rental unit dirty upon move-out including: tub and shower surround; baseboards; microwave; stove and oven; walls; appliances; and the floor. The Landlords had to hire a cleaning company to clean the rental unit. The stove and fridge are easy to move. The stove has felt legs and the fridge is on wheels.

The Landlord said she heard the cleaning took four hours with three or four cleaners.

The Landlords submitted photos of the rental unit upon move-out showing the state of cleanliness. The Landlord submitted an invoice for the cleaning.

The Tenant testified as follows. She hired a cleaning company to clean the rental unit upon move-out. The rental unit was left in a clean condition. The oven is not on wheels and therefore it was not moved. The fridge was not moved as it was too heavy and she was worried moving it would damage the floor. She offered to do further cleaning during the inspection to be helpful but the Landlord declined.

The Tenant pointed out that the Landlords' photos are not dated and therefore it is not possible to tell when they were taken.

The Tenant had submitted photos of the rental unit upon move-out. She had submitted a recording of her interaction with the Landlord during the move-out inspection. I am unable to open this recording but have reviewed the Tenant's outline of it. The Tenant submitted an invoice from the cleaning company she hired; however, it is not legible.

***Painting supplies \$123.62 and painting \$200.00***

The Landlord testified as follows in relation to painting. The paint was in good shape when the Tenant moved in. The rental unit had to be painted upon move-out. The Tenant had put a TV mount on the bedroom wall and not repaired the damage. The Tenant had put up approximately twelve pictures on the wall. There were 70 holes in the walls marked for the painter. The areas requiring the most work were the bedroom, living room and hall walls. The remainder of the walls just needed touch ups.

The Landlord testified that the rental unit was painted in the summer of 2015. She said the walls were touched up just prior to the Tenant moving in.

The Landlords submitted invoices for the painting supplies and painting.

In response to a question from the Tenant, the Landlord testified that there were a few nail holes in the walls at the start of the tenancy above the bed and on the opposite wall in the bedroom. She said there would have only been one or two holes in the living room.

The Tenant submitted that there is nothing in the tenancy agreement that limited the number of pictures she could hang or prohibited her from mounting the TV. She acknowledged mounting the TV but said she filled the holes. She testified that she asked the Landlords for the paint information but they did not get back to her quick enough for her to fix the holes. She said that the submission that there were 70 holes in the walls is an exaggeration. She testified that she disagreed there were 50 holes as noted in the Landlords' materials.

The Tenant did not dispute that the rental unit was painted in the summer of 2015 but did dispute that touch ups were done prior to her move-in.

***Blind cleaning \$161.31***

The Landlord testified as follows in relation to blind cleaning. The blinds were greasy and dirty upon move-out. The photos submitted show the dust on the blinds. The Landlords had the blinds professionally cleaned.

The Landlords had submitted photos of the blinds. The Landlords submitted an invoice for the blind cleaning.

The Tenant testified that the cleaning company she hired cleaned the blinds. The Tenant submitted that the Landlords hiring the company to clean the blinds was excessive.

***Loss of rent \$1,470.00***

The Landlord testified as follows in relation to loss of rent. The Landlord found written notice from the Tenant ending the tenancy on May 6, 2018 in a common area in the

residence. The notice to end the tenancy was late. The Landlords could not get current photos of the rental unit for a rental ad given the state of it. The Landlords had to find old photos. The Landlords posted the rental unit for rent May 10, 2018. They posted it for the same amount of rent. Viewings of the rental unit were difficult because the rental unit was messy, cluttered and smelled of kitty litter. During one showing, the Tenant was present and made it uncomfortable for the potential renters. The Tenant frustrated the process. The Landlords rented the rental unit for July 1, 2018.

The Landlords submitted an email from potential tenants indicating their viewing was uncomfortable given the Tenant's presence and mood.

The Landlords sought \$70.00 for utilities for June. The Landlord testified that the utilities were on an equal payment plan.

The Tenant acknowledged she gave late notice to end the tenancy and that she failed to comply with the *Residential Tenancy Act* (the "Act") in this regard. The Tenant submitted that the Landlords did not mitigate their losses. The Tenant testified that the Landlords received a lot of applications for the rental unit but were more concerned with finding a specific type of person. The Tenant referred to the low vacancy rate in the area.

The Tenant submitted a video of a viewing between the Landlord and potential tenants. She pointed out that the Landlord indicated she is not sure when the rental unit will be ready for rent. The Tenant submitted that the Landlords were more concerned with finding a good fit.

The Tenant submitted email correspondence showing she advised the Landlords she was moving May 3, 2018 and this email was received May 4, 2018.

In relation to utilities, the Tenant pointed out the rental unit would have been empty for June.

## Analysis

Section 7(1) of the *Act* states that a party that does not comply with the *Act* must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate the damage or loss.

Section 37 of the *Act* addresses a 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.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security and pet deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security and pet deposit at the end of a tenancy.

Based on the testimony of the parties, I find the Tenant did not extinguish her rights in relation to the security or pet deposit under sections 24(1) or 36(1) of the *Act*.

Based on the testimony of the parties, I find the Landlords did not extinguish their rights in relation to the security or pet deposit under section 24(2) of the *Act*. I note that the

Landlords did not send the move-out Condition Inspection Report to the Tenant using a service method permitted under section 88 of the *Act* as required by section 18 of the *Regulations*. However, the Landlords did send a copy within the time limit set out in section 18 of the *Regulations*, the Tenant acknowledged receiving this and did not raise an issue about the method. In the circumstances, I find the Landlords did not extinguish their rights in relation to the security or pet deposit under section 36(2) of the *Act*.

There was no issue that the tenancy ended May 31, 2018 and that the Landlords received the Tenant's forwarding address in writing the same day. Pursuant to section 38(1) of the *Act*, the Landlords had 15 days from May 31, 2018 to repay the security and pet deposit or file the Application claiming against the deposits. The Application was filed June 14, 2018, within the 15-day time limit.

However, Policy Guideline 31 addresses pet damage deposits and states:

The landlord may apply to an arbitrator to keep all or a portion of the deposit but only to pay for damage caused by a pet. The application must be made within the later of 15 days after the end of the tenancy or 15 days after the tenant has provided a forwarding address in writing. (emphasis added)

Here, the Landlords kept the \$700.00 pet deposit in circumstances where they were not claiming for damage caused by a pet. The Landlords were not permitted to do so. The Landlords should have returned the pet deposit and only claimed against the security deposit. I find the Landlords failed to comply with section 38(1) of the *Act* by failing to return the pet deposit within 15 days of May 31, 2018. Pursuant to section 38(6) of the *Act*, the Landlords cannot claim against the pet deposit and must return double the deposit to the Tenant. I find the Landlords must pay the Tenant \$1,400.00 for the pet deposit.

The Landlords were entitled to claim against the security deposit and I consider that claim now.

***Cleaning \$313.95 and blind cleaning \$161.31***

Based on the photos submitted by both parties, I am only satisfied that a few areas of the rental unit were left dirty upon move-out. For the most part, I find the rental unit was left reasonably clean as required by section 37 of the *Act*. I note that the standard in the *Act* is not one of perfection and may not be the standard of the Landlords.

Although I find a few areas of the rental unit were dirty upon move-out based on the Landlords' photos, including the blinds, the Tenant raised the issue of the date of these photos. The information about the date the photos were taken is not included in the evidence. The Tenant testified that she hired a company to clean the rental unit and that it was clean upon move-out. I decline to rely on the photos submitted in the circumstances.

None of the other evidence submitted satisfies me that the Tenant left the rental unit dirty. I therefore cannot find the Tenant breached the *Act* and decline to award the Landlords compensation for the cleaning costs.

***Painting supplies \$123.62 and painting \$200.00***

I note Policy Guideline 1 in this regard which states:

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

The Landlord testified that the Tenant left an excessive number of holes in the walls of the rental unit. The Tenant disputed this. I am not satisfied based on the evidence provided that the Tenant left the walls damaged beyond reasonable wear and tear. I do not find that the photos of the Landlords support this. I find that the photos of the Tenant support her position. None of the evidence satisfies me that the walls were damaged beyond reasonable wear and tear.

In relation to the holes from the TV mount, when I view the video submitted by the Tenant, the holes do not appear to be excessively large. I note that there is no evidence before me that the Landlords set rules about hanging items in the rental unit. The Tenant submitted that there were no such rules in the tenancy agreement. The



holes appear to be the usual size one would expect from a tenant hanging anything of size or weight. In my view, this is reasonable wear and tear and the type of “damage” landlords should expect to occur.

***Loss of rent \$1,470.00***

There is no issue that the Tenant breached section 45(1) of the *Act*. I accept that the Landlords were unable to rent the unit for June, I did not understand the Tenant to take the position that they rented the unit earlier than July 1, 2018. I accept that the Landlords therefore lost rent in the amount of \$1,400.00 for June.

The Tenant submitted that the Landlords did not mitigate their losses. I disagree. I find the Landlords posted the rental unit for rent within a reasonable time after receiving the Tenant’s written notice on May 6, 2018. I note that I do not consider the email sent by the Tenant to the Landlords about moving out to be proper notice under the *Act* and I find the Landlords were entitled to request proper written notice.

The Landlords posted the rental unit for the same rent that the Tenant was paying. I have reviewed the ads submitted and do not find them unusual in any way. In my view, the Landlords were entitled to outline what they were looking for in a tenant. I do not find their requests to be out of the ordinary or unusual. I do not accept that landlords must look for, and accept, any type of tenant willing to rent a rental unit in order to mitigate their losses.

I find based on the evidence submitted by the Tenant herself that the Landlords were actively attempting to rent the rental unit. The Landlord’s discussion with the potential tenants as shown in the video submitted do not change my view. I do not accept that this discussion demonstrates the Landlords did not mitigate their losses.

I note the wording of section 7 of the *Act* which states a “landlord...who claims compensation for damage or loss...must do whatever is reasonable to minimize the damage or loss”. The standard is one of reasonableness. Here, I find the Landlords took reasonable steps to mitigate their loss and find the Tenant is responsible for reimbursing the Landlords for the \$1,400.00 for June rent. I note that the Landlords have only requested reimbursement for the month immediately following the late notice.

I am not satisfied based on the evidence and submissions provided that the Tenant is responsible for paying the utilities for June given the Tenant was not in the rental unit during that time.

In summary, I find the Landlords are entitled to \$1,400.00 in compensation for loss of rent for June.

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

In total, I find the Landlords are entitled to compensation in the amount of \$1,500.00. However, the Landlords must pay the Tenant \$1,400.00. Given the pet deposit was doubled, I consider the Landlords to hold \$2,100.00 in deposits, \$1,400.00 for the pet deposit and \$700.00 for the security deposit. Therefore, the Landlords must pay the Tenant \$600.00. I grant the Tenant a Monetary Order in this amount.

### Conclusion

The Application is granted in part.

The Landlords are entitled to compensation in the amount of \$1,500.00. However, the Landlords must pay the Tenant \$1,400.00. Given the pet deposit was doubled, I consider the Landlords to hold \$2,100.00 in deposits, \$1,400.00 for the pet deposit and \$700.00 for the security deposit. Therefore, the Landlords must pay the Tenant \$600.00.

I grant the Tenant a Monetary Order for \$600.00. If the Landlords do not return \$600.00 to the Tenant, this Order must be served on the Landlords. If the Landlords 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*.

Dated: October 12, 2018

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Residential Tenancy Branch