



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SKYLINE LIVING  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, MNRL-S, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant 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.

As the tenant confirmed that they received a copy of the landlord's dispute resolution hearing package and written evidence package on July 11, 2018, I find that the tenant was duly served with these packages in accordance with sections 88 and 89 of the *Act*. Since the landlord confirmed that they had received copies of the tenant's written evidence, I find that the tenant's written evidence was duly served in accordance with section 88 of the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's deposits in

partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

On February 17, 2018, the tenant and the then landlord signed a fixed term tenancy that was to cover the period from February 15, 2018 until August 31, 2019. Monthly rent was set at \$1,250.00, payable in advance on the first of each month. The current landlord who assumed ownership of this rental property on May 3, 2018, continues to hold the tenant's \$625.00 security deposit paid on February 3, 2018, and \$625.00 pet damage deposit paid in two stages on February 3, 2018 and February 17, 2018.

The parties agreed that a move-in condition inspection was conducted at the beginning of this tenancy. The landlord entered into written evidence a copy of the report of that inspection that was signed by a representative of the then landlord and the tenant.

On June 5, 2018, the tenant commenced efforts to notify the landlord that he was planning to end his tenancy early. The tenant said that on June 17, 2018, he sent the landlord an email advising that he had already left the rental unit. The landlord subsequently undertook a move-out condition inspection of the by-then abandoned rental unit on July 1, 2018, providing the tenant with a copy of the report of that inspection shortly thereafter.

The parties agreed that the tenant did not pay any rent for June or July 2018. The tenant did not dispute the landlord's assertion that some cleaning was necessary at the end of this tenancy and that the landlord would have to remove some furniture and a mattress from the rental suite at the end of this tenancy.

The landlord's application for a monetary award of \$2,600.00, plus recover of the filing fee included the following items listed on the landlord's Monetary Order Worksheet:

<b>Item</b>	<b>Amount</b>
Unpaid June 2018 Rent	\$1,250.00
Loss of Rent July 2018	1,250.00
Cleaning of Fridge and Stove	50.00
Remove Furniture	25.00
Remove Mattress	25.00
<b>Total of Above Items</b>	<b>\$2,600.00</b>

At the hearing, the landlord's representative (the landlord) testified that the landlord commenced almost immediate attempts to re-rent the tenant's rental unit as soon as the landlord became aware that the tenant was intending to vacate the rental unit. Although there were some showings of the rental unit, the landlord said that the rental unit was not rented to a new tenant until August 1, 2018. The landlord said that the new tenant signed a one year fixed term tenancy for a monthly rent of \$1,300.00, commencing on August 1, 2018.

The tenant testified that he tried to speak with one of the landlord's representatives to arrange for an early end to this tenancy in early June 2018. When it became apparent that the landlord was not willing to allow the tenant to end this tenancy early with only a minimal payment of liquidated damages, the tenant notified the landlord that he was vacating the rental unit.

### 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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the tenant was in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the August 31, 2019 date specified in that agreement. As such, the landlord is entitled to compensation for losses incurred as a result of the tenant's failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenant did not pay any rent for June or July 2018. However, section 7(2) of the *Act* places a responsibility on a landlord claiming

compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for the remainder of June 2018, after the tenant vacated the rental unit and for July 2018. As such, I am satisfied that the landlord has discharged the duty under section 7(2) of the *Act* to minimize the tenants' loss.

The landlord is entitled to a monetary award of \$1,250.00 for unpaid rent owing from June 2018. I also find that the landlord's tenancy agreement with the new tenant commencing on August 1, 2018, led to a \$50.00 increase in the monthly rent that the landlord is to receive from the rental unit for the remaining 13 months of the original tenancy agreement. For this reason, I reduce the amount of the landlord's eligibility for loss of rent for July 2018 from \$1,250.00 by \$650.00 (\$13 months @ \$50.00 per month = \$650.00) to reflect the landlord's true loss in rent over the course of the original fixed term agreement entered into by the tenant.

Paragraph 37(2)(a) of the *Act* establishes 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." In this case, based on the landlord's undisputed sworn testimony and written evidence, I find that the rental unit was not left reasonably clean and that the landlord is entitled to the requested monetary awards for cleaning and for the removal of furniture and a mattress.

I also allow the landlord to retain the tenant's deposits in partial satisfaction of the monetary award issued in this decision. Since the landlord has been successful in this application, I allow the landlord to recover the \$100.00 filing fee from the tenant.

### Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, loss of rent and the filing fee for this application and allows the landlord to retain the deposits:

Item	Amount
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Unpaid June 2018 Rent	\$1,250.00
Loss of Rent July 2018 Less Amount of Increased Rent to be Received during the Original Term of the Tenancy (\$1,250.00 - \$650.00 - \$600.00)	600.00
Cleaning of Fridge and Stove	50.00
Remove Furniture	25.00
Remove Mattress	25.00
Less Deposits (\$625.00 + \$650.00 = \$1,250.00)	-1,250.00
Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$800.00</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: September 04, 2018

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Residential Tenancy Branch