



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRLS, MNDCLS, FFL

### Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The landlords applied for a monetary order for damage to the unit, site or property, for authorization to retain all or part of the tenants' security deposit and pet damage deposit, for compensation for damage or money owed under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

Landlord SD ("landlord") and tenant KB ("tenant") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing. The hearing process was explained to the parties and an opportunity to ask questions was provided to both parties.

Neither party raised any concerns regarding the service of documentary evidence. The tenant confirmed that they did not serve documentary evidence in response to the landlords' application.

### Preliminary and Procedural Matters

The landlord confirmed the two email addresses for the landlords at the outset of the hearing. The tenant confirmed that they did not have an email address to provide and would prefer to receive the decision by regular mail. The parties confirmed their understanding that the decision would be emailed to the landlords and would be sent by regular mail to the tenants and that any applicable orders would be sent to the appropriate party.

At the outset of the hearing, the first name of the female tenant KB was corrected to remove an “e” at the end of her first name which the parties agreed was an error. As a result and in accordance with section 64(3) of the *Act*, the landlords’ application was amended to reflect the correct spelling of the first name of the female tenant.

### Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants’ security deposit and pet damage deposit under the *Act*?
- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on May 1, 2015 and reverted to a month to month tenancy after April 30, 2016. Monthly rent was originally \$1,150.00 per month and was due on the first day of each month and increased during the tenancy to \$1,192.00 per month. The tenants paid a security deposit of \$575.00 and a pet damage deposit of \$375.00 at the start of the tenancy which the landlords continue to hold.

The landlords’ monetary claim of \$1,357.00 contained a mathematical error in the addition and is actually \$1,323.85 comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid portion of November 2017 rent	\$1,033.07
2. Repair damages to suite	\$90.78
3. Suite left in dirty condition	\$200.00
<b>TOTAL</b>	<b>\$1,323.85</b>

Regarding item 1, the landlord testified that the tenancy ended on November 26, 2017 when the tenants vacated the rental unit based on a previous decision where the landlords obtained an order of possession based on a 1 Month Notice to End Tenancy for Cause (“1 Month Notice”) for repeated late payment of rent. The previous decision

file number ("previous decision") has been included on the cover page of this decision for ease of reference.

According to the landlord the tenants did not pay rent for the month of November 2017 which the tenant confirmed during the hearing. The landlord stated that the amount of \$1,033.07 was arrived at by taking the monthly rent of \$1,192.00 and dividing that amount by 30 to account for the number of days in November. \$1,192.00 divided by 30 equals 39.733 which the landlords used as the per diem rental rate of \$39.733 per day. The landlords then multiplied that amount by 26 days which equals \$1,033.06. I note that the landlords' amount was off by one penny and totals \$1,033.06.

Regarding items 2 and 3, the landlord admitted that she failed to serve the tenant with the receipts in the amount of \$200.00 for cleaning costs and the \$90.78 for damages to the rental unit. As a result, the parties were advised that I was not satisfied that the landlord had met the burden of proof as a result which I will discuss further below.

### Analysis

Based on the testimony of the parties provided during the hearing, the documentary evidence and on the balance of probabilities, I find the following.

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlords must then provide evidence that can verify the value of the loss or damage.

Finally it must be proven that the landlords did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

**Item 1** – Section 26 of the *Act* states that tenants must pay rent on the day that it is due in accordance with the tenancy agreement. I find that there is no dispute that rent for November 2017 was not paid by the tenants based on the evidence before me and as a result, the tenants owe \$1,033.06 which I described above as the amount owing for November 1, 2017 to November 26, 2017, inclusive. Therefore, I find the landlords have met the burden of proof and I award the landlords **\$1,033.06**.

**Items 2 and 3** – Due to the landlords failing to serve the tenants with receipts for the cleaning costs and for the damages, I find the landlords have failed to meet part three of the test for damages and loss. Therefore, I dismiss this portion of the landlords' claim due to insufficient evidence without leave to reapply.

As the landlords' application was mostly successful, I grant the landlords the recovery of the cost of the filing fee pursuant to section 72 of the *Act* in the amount of **\$100.00**.

I find that the landlords have established a total monetary claim in the amount of **\$1,133.06** pursuant to section 67 of the *Act* comprised of \$1,033.06 for item 1 plus \$100.00 for the recovery of the cost of the filing fee.

I authorize the landlords to retain the tenants' full security deposit of \$575.00 and full pet damage deposit of \$300.00 which have accrued \$0.00 in interest, in partial satisfaction of the landlords' monetary claim. I grant the landlords a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenants to the landlords in the amount of **\$258.06**.

### Conclusion

The landlords' claim is mostly successful.

The landlords have established a total monetary claim in the amount of \$1,133.06 and have been authorized to retain the tenants' combined deposits of \$875.00. The landlords are granted a monetary order in the amount of for the balance owing by the

tenants to the landlords in the amount of \$258.06 pursuant to section 67 of the *Act*. The monetary order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 5, 2018

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Residential Tenancy Branch