



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNDCL-S, MNRL-S, FFL, MNSD, RPP, FFT

### Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67;
- an Order for the landlord to return the tenants' personal property, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

- a Monetary Order for unpaid rent, pursuant to section 67;
- a Monetary Order for damages, pursuant to section 67;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:38 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the

teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that he served the tenants with separate notices of dispute resolution packages by registered mail on July 10, 2018. The landlord provided the Canada Post Tracking Numbers to confirm these registered mailings. I find that the tenants were deemed served with these packages on July 15, 2018, five days after their mailing, in accordance with sections 89 and 90 of the *Act*.

The landlord testified that his application for dispute resolution stated his nick-name, not his full legal name. Pursuant to section 64 of the *Act*, I amended the application for dispute resolution to reflect the landlord's full legal name.

#### Preliminary Issue- Tenants' Application

Rule 7 of the Rules of Procedure provides as follows:

##### **7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Based on the above, **in the absence of any evidence or submissions from the tenants, I order the tenants' application dismissed without liberty to reapply.**

#### Preliminary Issue- Withdrawal

During the course of the hearing, the landlord withdrew his application for a monetary order for unpaid rent. As such, I dismiss the landlord's application for a monetary order for unpaid rent with leave to reapply.

I make no findings on the merits of the landlord's application for a monetary order for unpaid rent. Liberty to reapply is not an extension of any applicable limitation period.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for damages, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided undisputed testimony that this tenancy began on December 1, 2017; however, he allowed the tenants early access to the rental property as of November 25, 2017. The landlord testified that the tenants moved out of the rental property without providing notice to the landlord and that this tenancy ended on June 30, 2018. At the beginning of this tenancy the tenants pre-paid six months of rent in the amount of \$19,800.00 for December 2017 to June 2018. A security deposit of \$1,650.00 and a fob deposit of \$200.00 was paid by the tenants to the landlord.

The landlord testified that on June 20, 2018 he was contacted by a woman stating that she was the tenants' agent (the "agent") and that the tenants were moving out of the rental property by the end of the month. The landlord testified that on June 20, 2018 the agent provided him with her address in writing and told him that he could contact the tenants through her.

The landlord testified that he completed a move in condition inspection and inspection report with the tenants on November 22, 2017 and that it was signed by both parties and provided to the tenants. The landlord testified that he completed a move out condition inspection and inspection report with the agent on June 30, 2018. The move out condition inspection report was signed by both the landlord and the agent and a copy was provided to the agent. The move in and move out inspection reports were

entered into evidence. The landlord further testified that the agent returned the keys and fobs on June 30, 2018 and he returned the \$200.00 fob deposit to the agent.

The move out condition inspection report stated, "move out all good except smell of smoke". The agent signed the move out condition inspection report directly below the above comment.

The landlord testified that the rental property is a no smoking building and that the tenants were informed of this when they moved in. The landlord testified that he verbally warned the tenants about the no smoking rule on at least two occasions and that the concierge sent the tenants a written warning about smoking in the rental property.

The landlord testified that after the tenants moved out, the rental property wreaked of cigarette smoke. The landlord testified that he hired a home inspector to come and inspect the property after the tenants vacated, to provide third party evidence for this hearing, that the rental property required remediation. The home inspection report was entered into evidence and stated that there was a strong and offensive smell of smoke throughout the property. The landlord is seeking reimbursement for the cost of the home inspection report. The landlord entered into evidence a receipt for the home inspection report in the amount of \$598.50.

The landlord testified that he hired a company to remove the odor of cigarette smoke from the house. The landlord is seeking a monetary order for the cost of the odor removal treatment. The landlord entered into evidence a receipt for same in the amount of \$1,890.00.

The landlord testified that after the odor treatment the property still smelt of smoke and so he had it re-painted. The landlord is seeking reimbursement for the cost of re-painting the rental property. The landlord entered into evidence a receipt for painting the rental property in the amount of \$2,205.00. The landlord testified that the rental property was re-painted just before the tenants moved into the rental property.

## Analysis

Section 7 of the *Act* states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the evidence of the landlord and the landlord's testimony, I find that the tenants breached section 37 of the *Act* by leaving the rental property with a pervasive odor of cigarette smoke which required remediation. The landlord submitted into evidence, an odor removal receipt in the amount of \$1,890.00. I find that the tenants are responsible for this charge.

Residential Policy Guideline 40 states that useful life of interior paint is four years; therefore, at the time the tenants vacated the rental property there was three years and six months (42 months) of useful life left on the interior paint. I find that the tenants are responsible for the cost of re-painting the rental property as per the following calculation:

$$\begin{aligned} &\$2,205.00 \text{ (cost of paint)} / 48 \text{ (months of useful life)} = \$45.94 \text{ (cost per month)} \\ &42 \text{ (months of useful life remaining)} * \$45.94 \text{ (cost per month)} = \mathbf{\$1,929.48} \end{aligned}$$

I find that the home inspection cost did not arise directly from the tenants' breach of section 37 because it was not required to rectify the smell of smoke. It was the landlord's choice to hire a home inspector to inspect his home in preparation for this hearing. The only fee associated with the preparation for this hearing that is recoverable is the \$100.00 filing fee. I find that the landlord is not entitled to recover the cost of the home inspection from the tenants.

As the landlord was successful in his application for dispute resolution, he is entitled to recover the \$100.00 filing fee from the tenants.

Section 72(2) states that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenants' entire security deposit.

Conclusion

I find that the landlord is entitled to retain the tenants' security deposit in the amount of \$1,650.00.

Pursuant to section 67 and 72 of the *Act*, I issue a monetary Order for landlord under the following terms:

Item	Amount
Odor removal	\$1,890.00
Painting	\$1,929.48
Filing fee	\$100.00
Less security deposit	-\$1,650.00
<b>Total of Above Items</b>	<b>\$2,269.48</b>

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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.

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 4, 2018

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Residential Tenancy Branch