



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL-S MNDCL-S FFL

### Introduction

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

- a monetary order for damage and loss pursuant to section 67;
- authorization to retain the security deposit for this tenancy pursuant to section 38; and
- authorization to recover the filing fees from the tenants 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. The landlord JV confirmed he represented both applicants. The tenant TW confirmed he represented both named co-tenants.

As both parties were present service was confirmed. The landlord testified that the application for dispute resolution and evidence were each served on the tenant by registered mail sent on August 16, 2018. The landlord provided two Canada Post tracking numbers as evidence of service. The tenant confirmed on behalf of both tenants receipt of the landlord's application and evidence. The tenant testified that they had not served any evidence of their own. Based on the testimonies I find that both of the tenants were served with the landlord's application and evidence in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed based on estimates, they have received accurate quotes for repairs and the actual amount of their monetary claim is \$31,524.91. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as the amount of the monetary amount

sought changing based on accurate quotes being obtained is reasonably foreseeable, I amend the landlord's Application to increase the landlord's monetary claim from \$22,664.00 to \$31,524.91.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

Is the landlord entitled to recover the filing fee for their application from the tenants?

Background and Evidence

While I have turned my mind to all the evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings around each are set out below.

The parties agreed on the following facts. This tenancy began in January, 2011 and ended in July, 2018. The monthly rent at the end of the tenancy was \$1,664.00 payable on the first of each month. A security deposit of \$800.00 was paid at the start of the tenancy and is still held by the landlord. The parties did not prepare a condition inspection report at any time during the tenancy. The parties signed an addendum to the tenancy agreement where the tenants agreed that the premise was in an acceptable condition.

There was a previous hearing under the file numbers on the first page of this decision where the landlord was awarded an order of possession as well as a monetary award for the June and July, 2018 rent arrear.

The landlord submits that the rental unit was in a state of disrepair and considerable cleaning and repairs were required after the tenancy ended. The landlord claims the amount of \$31,524.91 for the following items.

Item	Amount
Registered Mail	\$60.90
Filing Fee	\$100.00
Cell Phone Bill	\$55.00
July Rent Increase Not Awarded	\$64.00
Loss of Rental Income (Aug-Nov)	\$6,656.00

Industrial Cleaning	\$1,209.60
Dump Runs	\$592.73
Floor Refinishing wood	\$8,830.31
Floor Replacement Vinyl	\$1,734.54
Faucet	\$227.98
New Door Handle Locks	\$202.28
Miscellaneous	\$38.29
New Doors	\$2,189.60
Kitchen & Laundry Appliances	\$2,503.18
Fix Walls Fix BR Ceiling	\$160.00
Paint Walls and Trim	\$2,450.00
Paint Materials	\$800.00
Remove Doors	\$450.00
Remove/Replace Baseboards for flooring	\$350.00
Replace upstairs Doors	\$220.00
Outside Repair	\$262.50
Prep for New Floor	\$800.00
Repair Exterior Stair Tear	\$40.00
Extra Paint Coat	\$200.00
New Baseboards	\$200.00
Gyproc Repair from Rat Infestation	\$300.00
<b>TOTAL</b>	<b>\$31,524.91</b>

The landlord submitted receipts, estimates and photographs in support of their claim. The landlord testified that the damage to the rental unit went beyond the expected wear and tear and that the process of making the suite inhabitable took several months during which they were unable to rent out the suite.

The tenant testified that they agree the rental unit was not fully cleaned at the end of the tenancy. The tenant said that they do not agree with the full amount claimed by the landlord as the rental unit was in an acceptable state at the start of the tenancy but it was not a new suite. The tenant disputes the extent of damages claimed by the landlord.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in

writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the evidence of the parties that the tenancy ended on July 31, 2018 and the landlord was provided with a forwarding address at which the tenants could be served on or prior to that date. The landlord filed their application for authorization to retain the security deposit on August 13, 2018, within the 15 days as provided under the *Act*.

However, the parties gave evidence that no condition inspection report was prepared at any time during the tenancy. Section 24 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 23 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report. While the parties testified that they signed an addendum to the tenancy agreement which provides that there were no issues with the condition of the rental unit at the start of the tenancy, I find that the form and contents of the addendum submitted into evidence is not a sufficient substitute for a condition inspection report.

I find that the landlord has extinguished their right to claim against the security deposit for damage to residential property as they failed to comply with section 23 of the *Act* and complete a condition inspection report in accordance with the regulations.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find there is insufficient evidence in support of the full amount sought by the landlord.

The principle of *res judicata* prevents an applicant from pursuing a claim that has already been conclusively decided. The July rent was the subject of a previous hearing and a final decision was issued by the previous arbitrator at the earlier hearing. The landlord now claims an additional amount that they submit was not awarded at the

earlier hearing. I find that I have no jurisdiction to consider a matter that has already been the subject of a final and binding decision by another arbitrator appointed under the *Act*. I find that the landlord's claim for the balance of rent for July, 2018 is not a new issue but the same matter already determined. Accordingly, I dismiss this portion of the landlord's claim seeking unpaid rent for July, 2018.

I find that the costs of registered mail and cell phone charges are not losses that arise from the violation of the tenants but the costs of pursuing a claim, serving the respondent and attending a hearing. As these costs do not arise from the tenants' conduct I find there is no basis for a monetary award. I dismiss these portions of the landlord's claim.

In the absence of a proper condition inspection report completed at the start of the tenancy I find there is insufficient evidence of the condition of the rental suite and what damages are attributable to the tenants. The tenant testified that the rental unit was left uncleaned and I find that the landlord is entitled to some of the costs incurred for cleaning of the suite.

I accept the landlord's evidence that they incurred costs of \$1,209.60 for cleaning and \$592.73 for multiple trips to the landfill to dispose of items left in the rental suite by the tenants. Accordingly, I issue a monetary award in those amounts.

I find that the photographs submitted by the landlord show some damage beyond that which would be expected from ordinary wear and tear but others that simply appear to be general wear from an occupied suite. I find that the majority of the expenses claimed by the landlord and the nature of the work done are more in the nature of upgrades and renovations rather than simply cleaning and bringing the suite into a habitable condition. A claimant may seek to be compensated for losses incurred to put them in the position they would have been in, but for the actions or negligence of the respondent. I find that the scope of the work performed and the amounts claimed by the landlord exceed that which would be reasonably expected for repairs and is more in the nature of upgrades and renovations. For the above reasons I find that there is insufficient evidence in support of the landlord's claim for the cost of work to the floors, walls, ceilings, doors, faucets, exterior, stairs and painting of the suite and dismiss those portions of the claim.

I accept the evidence that the appliances in the suite were damaged to the point that repairs or replacement was necessary. The photographs submitted show far more than simply cosmetic damage as the stovetop appears shattered and there is a tear in the

frame of the laundry machine. I accept the landlord's evidence that the costs for repair or replacement of the items totalled \$2,503.18 accordingly.

While I accept the landlord's evidence that they suffered some rental income losses as the rental unit could not be occupied until it was cleaned and repaired I find that there is insufficient evidence to support the full amount sought. I do not find it reasonable that the cleaning and repairs could not have been completed for 4 months. Even if the work was significant I find that the period of time that the rental unit was unused is more than what would reasonably be expected. I find that a monetary award of \$3,328.00, the equivalent of two month's rent payable under the tenancy agreement to be reasonable for the loss of rental income.

I find there is insufficient evidence in support of the remaining portions of the landlord's claim for miscellaneous expense and the rat infestation. I find there is insufficient evidence to show that these costs are attributable to the tenants' actions or negligence. As the landlord has not met their evidentiary burden I dismiss these claims accordingly.

As the landlord's application was successful the landlord may recover the filing fee for this application.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit of \$800.00 in partial satisfaction of the monetary award. No interest is payable over this period.

### Conclusion

I issue a monetary award in the landlords' favour in the amount of \$6,933.51 against the tenants on the following terms.

Item	Amount
Filing Fee	\$100.00
Loss of Rental Income	\$3,328.00
Industrial Cleaning	\$1,209.60
Dump Runs	\$592.73
Kitchen & Laundry Appliances	\$2,503.18
Less Security Deposit	-\$800.00
<b>TOTAL</b>	<b>\$6,933.51</b>

The landlords are provided with a Monetary 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: December 12, 2018

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Residential Tenancy Branch