



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL –S, MNDCL –S, FFL

### Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent and other damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The landlords' agent appeared at the hearing; however, there was no appearance on part of the tenant.

Since the tenant did not appear, I explored service of hearing documents upon the tenant. The landlords' agent testified that a skip tracer was hired to locate the tenant's address of residence. The skip tracer was successful and that is the address the landlords used to send the hearing documents to the tenant, via registered mail on August 21, 2018. The registered mail was returned as unclaimed.

The landlord's agent submitted a copy of the skip tracer's email that provided the tenant's address; and, the registered mail envelope, including tracking number, as proof of service.

Section 90 of the Act deems a person to be in receipt of documents five days after mailing, even if the recipient refuses to accept or pick up their mail. Accordingly, I found the tenant to be deemed served and I continued to hear from the landlords' agent without the tenant present.

### Issue(s) to be Decided

1. Are the landlords entitled to unpaid rent and other damages or loss claimed against the tenant?
2. Are the landlords authorized to retain the tenant's security deposit?

### Background and Evidence

The one year fixed tenancy started on December 1, 2017 and the tenant paid a security deposit of \$700.00. The tenant was required to pay rent of \$1,400.00 on the first day of every month.

The tenant's rent payments for April 2018 and May 2018 were dishonoured. The landlord's agent served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on May 11, 2018 that had a stated effective date of May 21, 2018. On May 21, 2018 the landlord's agent found the tenant had vacated the rental unit and left the keys for the property.

The landlords seek to recover from the tenant unpaid rent of \$1,400.00 plus the \$7.00 fee the landlords' bank charged for the tenant's returned cheques for each of the months of April 2018 and May 2018. The landlords provided a copy of their bank statement showing the returned cheques and the \$7.00 bank fees for each returned cheque.

The landlords also seek to recover cleaning costs from the tenant. The invoice provided in support of cleaning indicates the landlord was charged for cleaning, including carpet cleaning, and changing of deadbolts for \$295.00 for labour, \$42.99 for materials, plus tax. I pointed out to the landlords' agent that the landlords' indicate a claim for cleaning but included the lock changing charge in the amount claimed. The landlords' agent acknowledged that the amount claimed was for the total amount of the invoice but that there was no basis to charge the tenant for changing the locks since the keys were returned.

The landlords' agent also stated that the cleaning company charged \$295.00 for "professional cleaning" of the unit and the landlords' agent was of the view the tenant was responsible to "professionally clean" the rental unit at the end of the tenancy. I informed the landlords' agent that tenants are only obligated to leave the rental unit "reasonably clean" under the Act and that costs to bring the unit to a higher level of cleanliness are not the tenant's responsibility. I asked the landlord to describe the areas of the rental unit that required additional cleaning. The landlord's agent's responses were largely focused on areas in the kitchen which was consistent with the move-out inspection report. The landlords' agent also stated that the bedroom carpeting required steam cleaning as it was dirty; however, the move-out inspection report did not indicate that. In light of this discussion, the landlord's agent was agreeable to an award of \$200.00 to bring the rental unit to a reasonably clean state.

The landlords also seek to hold the tenant responsible to pay for the cost to find a replacement tenant since the tenant breached the fixed term tenancy. Although the tenancy agreement includes a liquidated damages clause that exceeds the amount claimed, the landlords limited the claim to the actual charge of \$525.00. The landlords provided a copy of the invoice for finding a replacement tenant as evidence.

Other documentary evidence provided for this proceeding included the Monetary Order worksheet, the tenancy agreement and the addendum.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Under section 26 of the Act, a tenant is required to pay rent when due under the tenancy agreement. Upon review of the tenancy agreement, I find the tenant was obligated to pay rent of \$1,400.00 each month. Upon review of the landlords' bank statements, I also accept that the tenant failed to pay the rent for the months of April 2018 and May 2018. Therefore, I award the landlords \$2,800.00 for unpaid rent, as requested.

Under section 7 of the Residential Tenancy Regulations, a landlord may recover the bank fees the landlord is charged by their financial institution when the tenant's payment is dishonoured. I find the landlords demonstrated that they incurred bank fees of \$7.00 for each dishonoured cheque. Therefore, I award the landlords \$14.00 for the two dishonoured cheques for the months of April 2018 and May 2018, as requested.

Section 37 of the Act requires a tenant to leave a rental unit "reasonably clean" at the end of the tenancy. Where a landlord desires a professionally clean rental unit the landlord must bear the cost to bring the rental unit beyond reasonably clean. I accept the landlords' agent testimony that further cleaning was required in the kitchen area as that testimony was consistent with the move-out inspection report. However, I do not hold the tenant responsible for steam cleaning the bedroom carpeting as the move-out inspection report did not indicate the carpets were dirty and there was no other supporting evidence to demonstrate that to be the case such as photographs. Nor, do I hold the tenant responsible for changing the locks since the move-out inspection report reflects that the tenant returned all of the keys or means of access at the end of the

tenancy. I find the landlords' reduced claim of \$200.00 of the \$354.89 originally claimed to be within reason and I award that amount to the landlords for cleaning.

As for the landlords' request to recover the cost to find a replacement tenant, I find the landlords entitled to recover that amount from the tenant. The tenant breached the fixed term tenancy by ending the tenancy early. Where a tenant breaks their fixed term tenancy the tenant may be held liable to compensate the landlord for the landlords' losses associated with the breach. In this case, the tenancy agreement included a liquidated damages clause that provided for a greater amount payable should the tenant end the tenancy early. The liquidated damages clause may be found to be unenforceable as it was not very clear and the amount(s) indicated may be found to be excessive and a penalty. However, the landlords did not pursue the tenant for the amounts stipulated in the liquidated damages clause and only seek to hold the tenant responsible to pay the actual charge they incurred to find a replacement tenant. Therefore, I award the landlords \$525.00 as requested.

The landlords were largely successful in their claims, and I further award the landlords recovery of the \$100.00 filing fee paid for this application.

I authorize the landlords to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlords with this decision and I provide the landlords with a Monetary Order for the balance owing, calculated as follows:

Unpaid rent: April 2018 and May 2018	\$2,800.00
Bank fees for dishonoured cheques	14.00
Cleaning	200.00
Tenant replacement cost	525.00
Filing fee	100.00
Less: security deposit	<u>(700.00)</u>
Monetary Order	\$2,939.00

### Conclusion

The landlords are authorized to retain the tenant's security deposit and have been provided a Monetary Order for the balance owing of \$2,939.00 to serve and enforce upon the tenant.

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 19, 2018

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Residential Tenancy Branch