



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, MNRL-S, FFL

### Introduction

On August 28, 2018, the Landlords made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking to retain the security deposit in partial satisfaction of these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlords attended the hearing; however, the Tenants did not appear. All in attendance provided a solemn affirmation.

The Landlords advised that they served a Notice of Hearing package and evidence to each Tenant by registered mail on September 4, 2018 (the registered mail tracking numbers are on the first page of this decision). Based on this undisputed testimony and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were deemed to have received the Notice of Hearing package and evidence five days after they were mailed.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Are the Landlords entitled to monetary compensation?
- Are the Landlords entitled to apply the security deposit towards these debts?

- Are the Landlords entitled to recovery of the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlords stated that the tenancy started on June 20, 2018 and a written tenancy agreement was signed for a fixed length of time, ending on June 30, 2019. The Tenants provided notice to end their tenancy on July 4, 2018, and the tenancy ended on August 15, 2018 when the Tenants vacated the rental unit. The rent was established at \$2,100.00 per month, due on the first of each month. There was also an extra charge of \$30 per month for a water fee. A security deposit of \$1,050.00 was also paid. The tenancy agreement stipulated that there would be a \$500.00 liquidated damages charge for breaking the fixed term tenancy early.

The Landlords provided a monetary order worksheet and advised that they were seeking compensation in the amount of **\$85.75** for the cost of the hydro electricity that the Tenants consumed during the tenancy. They stated that the Tenants did not set up their own hydro account and the arrears were paid by the Landlords. They submitted an invoice as documentary evidence to support this claim.

The Landlords advised that they were seeking compensation in the amount of **\$297.67** for the cost to have the carpet professionally cleaned at the end of the tenancy. They stated that the tenancy agreement requires the Tenants to have the carpets professionally cleaned at the end of the tenancy. They submitted an invoice as documentary evidence to support this claim.

The Landlords are also seeking compensation in the amount of **\$500.00** for the cost of liquidated damages, as the Tenants provided written notice to end their fixed term tenancy early, on July 4, 2018. They stated that after receiving this notice, they hired a property manager, who was able to re-rent the rental unit for August 17, 2018.

The Landlords submitted that they were seeking compensation in the amount of **\$130.00** for unpaid rent for July 2018 and **\$25.00** for a late rent payment fee. They

advised that the Tenants electronically transferred \$2,000.00 on July 2, 2018 and told the Landlords that they would send the balance. On July 4, 2018, the Tenants electronically transferred \$130.00, but cancelled this transfer before the Landlords could accept it. The Landlords are also seeking the \$25.00 fee for late payment of rent, as per the tenancy agreement.

Finally, the Landlords submitted that they were seeking compensation in the amount of **\$1099.35** for unpaid rent for the days that the Tenants occupied the rental unit in August 2018. As well, they were seeking compensation of **\$25.00** for a late rent payment fee.

The Landlords advised that they received the Tenants' forwarding address via email on August 11, 2018 and subsequently made their Application on August 28, 2018.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposit. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposit, and the Landlords must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Pursuant to Section 38 of the *Act*, if the Tenants want the security deposit returned, they must provide a forwarding address in writing to the Landlords first. The undisputed evidence is that the Tenants provided the Landlords with their forwarding address in writing on August 11, 2018. ~~As the Landlords made their Application on August 28, 2018, more than 15 days after receiving the Tenants' forwarding address, I am satisfied that the doubling provisions of the Act do apply. Therefore, I find that the Tenants are entitled to a monetary award in the amount of \$2,100.00.~~ While the date the Landlords received the Tenants' forwarding address in writing was August 11, 2018, the undisputed evidence is that the tenancy ended on August 15, 2018. Consequently, the date the tenancy ended is the date which initiated the 15-day time limit for the Landlords to deal with the deposit. As the Landlords made an Application to keep the deposit

within 15 days of August 15, 2018, I am satisfied that the Landlords did not breach the requirements of Section 38, and the doubling provisions of the Act do not apply in this circumstance.

With respect to the Landlords' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlords' claims for compensation in the amount of \$85.75 for the cost of the hydro that the Tenants consumed during the tenancy, based on the undisputed evidence, I am satisfied that the Landlords have established their claim. As such, I grant a monetary award in the amount of **\$85.75** to rectify this issue.

With respect to the Landlords' claims for compensation for the cost to have the carpet professionally cleaned, based on the undisputed evidence, I am satisfied that the Landlords have established their claim. As such, I grant a monetary award in the amount of **\$297.67**.

Regarding the Landlords' claims for the liquidated damages, the undisputed evidence is that the parties entered into a fixed term tenancy agreement from June 20, 2018 until June 30, 2019, yet the tenancy effectively ended when the Tenants vacated the rental unit on August 15, 2018. Sections 44 and 45 of the *Act* set out how tenancies end. It also specifies that Tenants must give written notice to end a tenancy and that notice cannot be effective earlier than the date specified in the tenancy agreement as the end of the tenancy.

I find it important to note that Policy Guideline # 5 outlines a Landlords' duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Moreover, in claims for loss of rental income in circumstances where the Tenants end the tenancy contrary to the provisions of the Legislation, the Landlords claiming loss of rental income must make reasonable efforts to re-rent the rental unit. I am satisfied that the Tenants gave the Landlords minimal notification that they were ending the tenancy and vacating the rental unit. I am also satisfied based on the evidence before me that the Landlords

mitigated their loss by taking the necessary steps to re-rent the premises as quickly as possible.

With respect to the Landlords' request for liquidated damages, I find it important to note that Policy Guideline # 4 states that a "liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement" and that the "amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into". This guideline also sets out the following tests to determine if this clause is a penalty or a liquidated damages clause:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

Based on the evidence before me, I am satisfied that there was a liquidated damages clause in the tenancy agreement that both parties had agreed to, and that the genuine pre-estimate of loss does not meet the tests for establishing this amount as a penalty. Furthermore, the policy guideline states that "If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent." In this instance, I find that ending a tenancy with such short notice would put the Landlords in a position where efforts to re-rent the premises would be considered sufficiently more than "negligible or non-existent". As such, I am satisfied that the Landlords mitigated their losses and that the Landlords have sufficiently established this claim. Consequently, I grant a monetary award in the amount of **\$500.00** for the liquidated damages.

Finally, with respect to the Landlords' claims for rent arrears for July and part of August 2018, and for the late rent fees, based on the undisputed evidence before me, I am satisfied that the Landlords have established their claim. As such, I grant a monetary award in the amount of **\$1,279.35**.

As the Landlords were successful in their claims, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of Section 72 of the Act, I allow the Landlords to retain the security deposit in partial satisfaction of the amount awarded.

Pursuant to sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Landlords to the Tenants**

Hydro bill	\$85.75
Carpet cleaning	\$297.67
Liquidated damages	\$500.00
Rent arrears for July and August 2018	\$1,279.35
Late rent payment fee	\$50.00
Recovery of filing fee	\$100.00
Less security deposit	-\$1050.00
Double security deposit	-\$2,100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$837.23</b>

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenants to the Landlords**

Hydro bill	\$85.75
Carpet cleaning	\$297.67
Liquidated damages	\$500.00
Rent arrears for July and August 2018	\$1,279.35
	\$1,229.35
Late rent payment fee	\$50.00
Recovery of filing fee	\$100.00
Less security deposit	-\$1050.00
<b>TOTAL MONETARY AWARD</b>	<b>\$1,212.77</b>

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$837.23** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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.

The Landlords are provided with a Monetary Order in the amount of **\$1,212.77** 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: January 23, 2019

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Residential Tenancy Branch

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A)  
OF THE RESIDENTIAL TENANCY ACT ON JANUARY 23, 2019  
AT THE PLACES INDICATED BY UNDERLINING OR USING ~~STRIKETHROUGH~~.