



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNRL-S, FFL

### Introduction

On August 9, 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*.

O.C. attended the hearing as an agent for the Landlord. A.M. and J.S. attended the hearing as advocates for the Tenant. All in attendance provided a solemn affirmation.

The Landlord advised that the Tenant was served a Notice of Hearing package and evidence by registered mail on August 15, 2018 and the Tenant confirmed receiving this package. Based on this undisputed testimony and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Notice of Hearing package and evidence.

The Tenant advised that he did not submit any documentary evidence for this file.

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.

All parties agreed that the tenancy started on March 1, 2014; however, there was differing testimony with respect to when the tenancy ended. The rent was established at \$4,116.00 per month, due on the first of each month. A security deposit of \$2,000.00 was also paid.

O.C. advised that the Tenant had abandoned the rental unit at some point, but a move-out inspection was scheduled and conducted on January 9, 2017. He referred to emails submitted as documentary evidence demonstrating that the Tenant was still in possession of the rental unit until at least December 23, 2016.

The Tenant advised that he had corresponded with the previous property manager on November 28, 2016 advising her that he had vacated the rental unit already and had told her that he would be available for the move-out inspection on January 9, 2017.

O.C. provided a monetary order worksheet and advised that they were seeking compensation in the amount of **\$7,326.72** for the cost of unpaid rent. He referred to the Tenant Ledger that indicated that the Tenant had not paid rent since September 13, 2016.

The Tenant stated that there were three floods of the property, from a nearby creek, with the first one occurring in July 2016. He advised that there was over a foot of water in the rental unit and the Landlord had this fixed by the end of August 2016. He then stated that the second and third floods occurred in early September 2016 and were so extensive that the City and the local fire department became involved and attempted to contact the Landlord. However, as they could not get in touch with the Landlord, the City took steps to try to mitigate the flood damage by bringing in their own equipment and sucking out the approximately five to six feet of water that flooded the rental unit. He advised that he flew back from Toronto on September 3, 2016 and met with the previous property manager to discuss the condition of the rental unit. During this discussion, he was under the impression that he needed to move out as the Landlord advised him to evacuate the rental unit. Due to the damage, he was not able to walk out the back door or deck and there was no electricity or hot water in the rental unit. He stated that the previous property manager advised him that he did not have to pay rent,

but he did not have any documentation confirming that there would be a rent reduction on account of the flood damage.

He attempted to live through the flood damage and he rented a backhoe, out of his own pocket, to regrade the property to ensure that any water would be re-directed and that there would be no more potential for flooding of the rental unit. He advised that he spent thousands of his own money to safeguard the rental unit from flooding again and to replace the personal items that he lost. There was a heavy rainfall in mid-September 2016 that would have flooded the rental unit again if not for his efforts to mitigate this issue with the excavator. It was around this time that he understood that he would have to move so he took approximately a month to try and find a new residence. He had moved most of his belongings out of the rental unit by early November 2016.

O.C. advised that he was not involved in discussions that the Tenant had with the previous property manager and that he was assigned this rental unit file after the Tenant filed a civil claim in July 2018 against the Landlord. He stated that the insurance company advised them to calculate how much rent should be reduced based on the square footage of the rental unit and that the Tenant should be compensated in the amount of \$1,189.66 for July 2016 and \$1,317.12 per month from August through to December 2016 due to the basement being unliveable. As such, the total rent arrears owing is \$9,326.72 less the security deposit of \$2,000.00. Thus, the Landlord is seeking **\$7326.72** in rental arrears owing.

O.C. stated that he was seeking compensation in the amount of **\$112.55** for the cost of the filing fee and for the cost of mailing the Notice of Hearing package to the Tenant via registered mail. During the hearing, O.C. was advised that I would make a determination on the recovery of the filing fee; however, there are no provision in the *Act* with respect to claiming re-imbursement of the cost of registered mail. As such, the registered mail costs were dismissed in their entirety.

O.C. stated that he was seeking compensation in the amount of **\$252.00** for the cost to have the locks re-keyed and **\$32.74** for the cost to have new keys cut. He stated that the move-out inspection was completed, that it was necessary to change the locks for safety concerns, and that the *Act* allows the Landlord to change the locks for new tenants.

The Tenant advised that he left the keys and fobs in the mailbox of the rental unit as instructed by the previous property manager around November 28 or 29, 2016 and that she had received these.

O.C. advised that he was seeking compensation in the amount of **\$262.50** for the cost to have the carpet professionally cleaned at the end of the tenancy. He stated that the *Act* requires that the carpets must be cleaned after a tenancy of one year and that, as per the tenancy agreement, it was the Tenant's responsibility to have this done. He advised that the carpets were professionally cleaned in April 2017 and he submitted an invoice as documentary evidence to support this claim.

The Tenant advised that he had the carpets cleaned or shampooed every six months. He stated that the carpet in the main living area and master bedroom were damaged so badly due to the flood that the previous property manager advised that the carpets must be removed.

O.C. indicated that the Landlords are also seeking compensation in the amount of **\$47.86** for the cost of the hydro bill from December 6, 2016 to January 5, 2017. He stated that his company set up a hydro account for the rental unit and this was the amount of hydro that the Tenant consumed during this period. He submitted an invoice as documentary evidence to support this claim.

The Tenant advised that he was not provided a copy of this invoice by the Landlord. Furthermore, he indicated that the hydro has always been in the Tenant's name and was not transferred until the Tenant gave up vacant possession of the rental unit.

Finally, O.C. indicated that the Landlords are seeking compensation in the amount of **\$71.29** for the cost of the gas bill from December 6, 2016 to January 3, 2017. He submitted an invoice as documentary evidence to support this claim; however, the Tenant advised that he was not provided with a copy of this invoice. O.C. advised that he would not be seeking compensation for this claim. As such, this claim was dismissed in its entirety.

O.C. advised that the Tenant's forwarding address in writing was only provided by the Tenant in mid-July of 2018 when the Tenant filed their civil claim against the Landlord.

### 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 Tenant's 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 Tenant, pursuant to Section 38(6) of the *Act*.

Section 39 of the *Act* states that if the Tenant does not provide a forwarding address in writing within one year after the end of the tenancy, the Tenant extinguishes their right to a return of the deposit and the Landlords may retain the deposit.

Pursuant to Section 38 of the *Act*, if the Tenant wants the security deposit returned, they must provide a forwarding address in writing to the Landlords first. The undisputed evidence is that the Tenant had not provided the Landlords with their forwarding address in writing. As the tenancy ended in January 2017 and as a forwarding address in writing was not provided within a year of the tenancy ending, I am satisfied that the Tenant extinguished their right to the return of the deposit and that the Landlord was entitled to keep it to apply to outstanding debts.

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 \$7326.72 for the rent outstanding, Sections 44 and 45 of the *Act* set out how tenancies end. In addition, Policy Guideline # 34 outlines the doctrine of frustration as "a contract [that] becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible." However, neither party raised the possibility that the tenancy ended due to

frustration. Therefore, in my view, there is no evidence before me that the tenancy ended in accordance with the *Act*, by either party, or due to frustration.

As the tenancy had not been ended in accordance with the *Act*, and as the Tenant still maintained possession of the rental unit, I am satisfied that the Tenant was still responsible for rent until the tenancy ended. The pertinent evidence I have before me is the Tenant's email reply on December 6, 2016 stating "I'm anticipating by the[sic] dec[sic] 23 or shortly after Christmas we should be ready for move out inspection." As well, I am satisfied that a move-out inspection was scheduled for January 9, 2017. Consequently, I am satisfied that the Tenant was responsible for the rent until vacant possession of the rental unit was given on January 9, 2017. As such, I am satisfied that the Landlord has established their claim for the unpaid rent, and I grant a monetary award in the amount of **\$9326.72** to rectify this issue.

With respect to the Landlords' claims for compensation for the cost to have the locks re-keyed and new keys cut, Section 25 of the *Act* requires the Landlords to rekey or alter the locks when requested to do so by the next tenant and that the Landlords must pay these costs. Consequently, I am not satisfied that the Landlords have established grounds for this claim and I dismiss it in its entirety.

With respect to the Landlords' claim for compensation for the cost to have the carpet professionally cleaned, the evidence I have before me is of an invoice that the carpet was professionally cleaned on April 22, 2017, almost four months after the tenancy ended. This causes me to question the validity of this claim. Furthermore, given the significance of the repeated flooding, I find that it is more likely than not that the carpet would have been removed entirely. Consequently, I am not satisfied that the Landlords have established grounds for this claim and I dismiss it in its entirety.

Finally, regarding the Landlords' claims for the hydro and gas bills, it is not clear to me why the property management company would have opened up these accounts, as alleged, while the Tenant had still occupied the rental unit and had these bills in their name. Consequently, I am not satisfied of the legitimacy of these claims. As such, I do not find that the Landlords have established grounds for these claims and I dismiss them in their entirety.

As the Landlords were partially 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 Landlords a Monetary Order as follows:

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

Rent arrears	\$9,326.72
Recovery of filing fee	\$100.00
Less security deposit	-\$2,000.00
<b>TOTAL MONETARY AWARD</b>	<b>\$7,426.72</b>

Conclusion

The Landlords are provided with a Monetary Order in the amount of **\$7,426.72** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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 8, 2019

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Residential Tenancy Branch