



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            FFL MNDCL-S MNRL-S

### Introduction

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

- a monetary order for damage to the rental unit pursuant to section 67;
- an application to retain the tenants' security deposit pursuant to section 38 of the *Act*; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended and all parties present were given a full opportunity to present their testimony, explain their evidence and cross-examine one another.

The parties confirmed receipt of each other's evidentiary packages, while the tenants confirmed receipt of the landlords' application for dispute. The parties are found to have been duly served in accordance with the *Act*.

### Issue(s) to be Decided

Can the landlords recover a monetary award, including a return of the filing fee?

Are the landlords able to retain the tenants' security deposit?

### Background and Evidence

The parties explained this tenancy began on April 1, 2016. Rent was \$1,550.00 per month and a security deposit of \$775.00 paid at the outset of the tenancy. Following a September 2018 dispute hearing before the RTB the landlords continue to hold \$675.00 of the security deposit.

The landlords sought a monetary award of \$6,549.36 listed on their monetary order worksheet as follows:

ITEM	AMOUNT
Hotel Receipts	\$847.92
Moving expenses	300.00
Liquidated Damages to Break Six Month Lease	500.00
Difference in Rent	100.00
Unpaid rent for July 2018	1,650.00
Unpaid rent for landlords	1,700.00
Moving Expenses Receipts	251.44
Strata Fines	1,200.00
<b>TOTAL =</b>	<b>\$6,549.36</b>

The landlords explained they sought a monetary award as described above due to alleged unpaid rent by the tenants, along with a series of strata fines allegedly incurred during the tenancy, and costs absorbed by the landlords associated with various moving expenses, hotel stays and their own tenancy. Specifically, the landlords said the tenants had remained in the property and failed to pay rent. The landlords explained they were themselves forced to break a tenancy agreement they had signed with their own landlord, expenses they incurred staying at various hotels and costs associated with a liquidated damages clause.

The tenants disputed all portions of the landlords' application for a monetary award. They explained the tenancy had ended by way of a 2 month notice. The tenants said that the landlords were granted an Order of Possession for September 2018 following a hearing before an arbitrator with the RTB on September 18, 2018. A review of the decision issued in relation to the September 18, 2018 hearing notes as follows, "I have taken into account that money for use and occupancy has been received by the landlords for September 2018 and as a result, I grant the landlords an order of possession effective **September 30, 2018 at 1:00 p.m.**"

The landlords confirmed a 2 Month Notice was issued but argued they incurred expenses related to hotel stays and their own tenancy because the tenants had disputed this 2 Month Notice and a hearing before the RTB was not scheduled until September 2018.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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. In this case, the onus is on the landlords to prove their entitlement to a claim for a monetary award.

*Residential Tenancy Policy Guideline #16* provides direction on compensation. It states as follows:

In order to determine whether compensation is due, the arbitrator may determine whether –

- 1) a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- 2) loss or damage has resulted from this non-compliance;
- 3) the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- 4) the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Following a review of the evidence submitted by the landlords and after having considered the testimony of all parties present to the hearing, I find the landlords have failed to provide sufficient evidence to prove the loss or damage resulted from non-compliance. At the hearing the landlords made reference to some receipts purporting to show the expenses related to their claim; however, the landlords have no right under section 67 of the *Act* to claim expenses related to their own move, or costs associated with their broken lease. I find the nexus between the tenants' actions and those of the landlords cannot be shown to have resulted from the tenants' failure to comply with the *Act*, regulations or the tenancy agreement. The tenants had a right under the *Act* to dispute the 2 Month Notice and ultimately failed resulting in their eviction. The landlords incurred expenses as a result of their own actions. They were under no obligation to stay in a hotel or sign a tenancy agreement. Furthermore, a review of the September 18, 2018 decision notes all rent was paid and accepted for "use and occupancy only". For these reasons, I dismiss all portions of the landlords' application other than the strata fines.

A review of the ledger submitted to evidence by the landlords notes strata fines from:

- March 1/17 - \$200.00
- July 27/17 - \$200.00
- August 8/17 - \$200.00
- August 22/17 - \$200.00
- September 11/17 - \$200.00
- September 16/17 - \$200.00

Total = \$1,200.00

I find these fines were levied while the tenants were still in occupation of the property. Any argument the tenants may have related to the merits of the fines must be brought to the strata corporation. As noted above, I can only grant monetary awards pursuant to section 67 of the *Act* when it has been shown that loss incurred when one party failed to comply with the *Act*, regulation or tenancy agreement. I find these strata fines fall within this scope and therefore grant the landlords the entire amount sought for Strata fines.

As the landlords were partially successful in their application, they may recover the \$100.00 filing fee.

Using the offsetting provisions contained in section 72 of the *Act*, the landlords may apply the tenants' security deposit in its entirety against the monetary award granted.

### Conclusion

Pursuant to sections 67 & 72 of the *Act*, I grant the landlords a Monetary Order of \$625.00 as follows:

ITEM	AMOUNT
Strata Fines	\$1,200.00
Return of Filing Fee	100.00
Less Security Deposit	(-675.00)
<b>TOTAL =</b>	<b>\$625.00</b>

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: February 28, 2019

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Residential Tenancy Branch