



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL, MNDL, MNRL-S

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on November 30, 2018 (the “Application”). The Landlords sought compensation for damage to the rental unit, to recover unpaid rent, to keep the security deposit and for reimbursement for the filing fee.

The Landlords had filed an Amendment December 04, 2018 removing tenant C.J. from the Application as they did not have contact information for tenant C.J.

The Landlord appeared at the hearing. The Tenant did not appear. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlords had submitted evidence prior to the hearing. The Tenant had not. I addressed service of the hearing package and Landlord’s evidence.

The Landlord testified that the hearing package and evidence were sent to the Tenant’s work address by registered mail on December 05, 2018. The Landlord testified that the package was addressed to the Tenant. The Landlord had submitted a registered mail receipt showing Tracking Number 1 for this package. I looked this up on the Canada Post website which shows it was delivered and signed for December 07, 2018. The delivery confirmation shows the signatory name as the Tenant’s initials.

Based on the undisputed testimony of the Landlord, evidence submitted and Canada Post website information, I find the Tenant was served with the hearing package and evidence. I do not find that the package was served in accordance with section 88 or 89 of the *Act* given it was sent to the Tenant’s work. This is not a method of service

permitted under these sections. However, I have evidence before me that the Tenant in fact received the package as the Canada Post website shows the Tenant signed for it. Therefore, I find the package was sufficiently served for the purposes of the *Act* pursuant to section 71(2)(c) of the *Act* and find the Tenant received the package December 07, 2018. I find the Tenant received the package in sufficient time to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord was given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Are the Landlords entitled to compensation for damage to the rental unit?
2. Are the Landlords entitled to recover unpaid rent?
3. Are the Landlords entitled to keep the security deposit?
4. Are the Landlords entitled to reimbursement for the filing fee?

#### Background and Evidence

The Landlords sought compensation as follows:

1. \$610.19 for new carpet on the landing on the second floor;
2. \$164.10 for steam cleaning the carpet; and
3. \$184.24 for a hotel stay to repair and clean the rental unit.

The Landlords originally sought \$138.43 for unpaid utilities; however, the Landlord withdrew this request at the hearing as the Tenant had paid this.

The Landlords also sought \$1,000.00 for unpaid rent for November. During the hearing, the Landlord advised that the Landlords had kept the \$1,000.00 security deposit and were seeking a further Monetary Order for \$1,000.00 for unpaid rent for November. I advised the Landlord that landlords are not permitted to keep the security deposit

without written permission from a tenant or an order from the RTB permitting them to keep it. The Landlord confirmed the Landlords are both seeking to keep the security deposit and seeking a Monetary Order for \$1,000.00 for a total of \$2,000.00 in unpaid rent for November.

I have reviewed the Application and do not find it clear that the Landlords were seeking \$2,000.00 in unpaid rent for November. The Tenant did not appear at the hearing to consent to an amendment to the Application. I do not find it fair to allow the Landlords to amend the Application at the hearing in the absence of the Tenant. Therefore, I will only consider whether the Landlords are entitled to \$1,000.00 in unpaid rent for November.

A written tenancy agreement was submitted as evidence. It is between the Landlords, Tenant and tenant C.J. in relation to the rental unit. The tenancy started March 01, 2018 and was a month-to-month tenancy. The rent was \$2,000.00 due on the first day of each month. The Tenant paid a \$1,000.00 security deposit. The agreement is signed by the Landlords, Tenant and tenant C.J.

The Landlord testified as follows.

The Tenant and tenant C.J. vacated the rental unit without notice October 29, 2018. A neighbour of the rental unit advised the Landlords that the Tenant and tenant C.J. appeared to be moving. Neither tenant provided a forwarding address.

The Landlords did not have an outstanding monetary order against the tenants at the end of the tenancy. The tenants did not agree in writing at the end of the tenancy that the Landlords could keep some or all of the security deposit.

A move-in inspection was done a few days prior to February 06, 2018. The unit was empty at the time. The Landlords gave the tenants a report to complete but the tenants never completed it.

There was no move-out inspection done and the tenants were not provided two opportunities to do a move-out inspection.

***\$610.19 for new carpet on the landing on the second floor***

The tenants had a dog that went to the washroom all over the floor of the rental unit. The dog also dug a hole in the carpet. The carpet was in good condition at the start of the tenancy. The Landlords chose not to replace all of the carpet and just replaced the carpet on the landing. The carpet on the landing is now a different color than the carpet in the remainder of the rental unit. The rental unit was brand new in 2017.

The Landlords submitted a receipt for the carpet. The Landlords submitted video and photos of the damage.

***\$164.10 for steam cleaning the carpet***

The carpets had to be steam cleaned because of the stains on it from the dog. There were stains all over the carpet. Not all the stains came out.

The Landlords submitted a receipt in relation to this item; however, it does not include any details of services provided. The Landlords submitted photos of the carpet showing it was dirty and stained.

***\$184.24 for a hotel stay to repair and clean the rental unit***

When the Landlords found out the tenants vacated, they had to go to the rental unit which is in a different city from their residence. They had to take days off work. They had to spend three days cleaning the rental unit which required them to stay in the city of the rental unit. They had no choice but to stay at a hotel for this period.

The Landlords submitted a receipt for this item. The Landlords submitted a video showing the rental unit was dirty after the tenants vacated. The tenants left food in the fridge and freezer and garbage in the rental unit. The carpet was dirty, stained and ripped. The Landlords submitted photos showing the wood floor was dirty and items were left in the rental unit.

***\$1,000.00 loss of rent for November***

The tenants paid October rent but not November rent. The tenants gave no notice that they were vacating. The rental unit was re-listed immediately after it was cleaned. It

was listed for the same rent amount. The rental unit was re-rented for November 15<sup>th</sup> for the same rent amount.

### Analysis

Section 7(1) of the *Act* states that a party that does not comply with the *Act* must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

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

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Section 37(2) of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

Based on the undisputed testimony of the Landlord, I find the Tenant did not extinguish his rights in relation to the security deposit under sections 24 or 36 of the *Act*.

I do not find it necessary to determine whether the Landlords extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment is relevant to claims for damage and the Landlords have sought to keep the security deposit towards unpaid rent for November.

Based on the undisputed testimony of the Landlord, I find neither tenant provided the Landlords with their forwarding address in writing and therefore section 38(1) of the *Act* was not triggered. I find the Landlords have complied with section 38 of the *Act*.

***\$610.19 for new carpet on the landing on the second floor***

Based on the undisputed testimony of the Landlord, I accept that the carpet in the rental unit was in good condition at the start of the tenancy. Based on the undisputed testimony of the Landlord and evidence submitted, I accept that the tenants or their dog damaged the carpet on the landing. Based on the evidence submitted, I find the damage to be well beyond reasonable wear and tear. I find the tenants breached section 37 of the *Act* by leaving the carpet damaged.

Based on the undisputed testimony of the Landlord and evidence submitted, I accept that the carpet had to be replaced.

Based on the undisputed testimony of the Landlord and evidence submitted, I accept that replacing the carpet cost \$610.19.

Based on the undisputed testimony of the Landlord, I accept that the Landlords minimized their loss by only replacing the carpet on the landing and not all the carpet in the rental unit. I find the carpet was less than two years old at the time and therefore do not deduct any amount based on the useful life of the carpet which should have been 10 years. I find the amount claimed to be reasonable considering the circumstances and award the Landlords the \$610.19 requested.

***\$164.10 for steam cleaning the carpet***

Based on the undisputed testimony of the Landlord and evidence submitted, I accept that the tenants left the carpet in the rental unit dirty and stained. Based on the evidence submitted, I find the tenants failed to leave the rental unit reasonably clean. Further, I find the stains on the carpet to be well beyond reasonable wear and tear. I find the tenants breached section 37 of the *Act* by leaving the carpet dirty and stained.

Based on the undisputed testimony of the Landlord and evidence submitted, I accept that the carpet had to be steam cleaned.

Based on the undisputed testimony of the Landlord, I accept that cleaning the carpet cost \$164.10. I find this amount to be reasonable for steam cleaning and award the Landlords the \$164.10 sought.

***\$184.24 for a hotel stay to repair and clean the rental unit***

Based on the undisputed testimony of the Landlord and evidence submitted, I accept that the tenants left the rental unit dirty and left items and garbage in the rental unit. I also accept that the tenants damaged the carpet. I find the tenants breached section 37 of the *Act* by failing to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the undisputed testimony of the Landlord and evidence submitted, I accept that the Landlords had to attend the rental unit and spend three days repairing and cleaning the rental unit. Further, I accept that the Landlords live in a different city and had no choice but to stay in a hotel while attending to the rental unit.

Based on the undisputed testimony of the Landlord and evidence submitted, I accept that the hotel stay cost \$184.24.

Based on the undisputed testimony of the Landlord and evidence submitted, I am satisfied the Landlords minimized their loss in this regard. The Landlords have not claimed for their time spent cleaning the rental unit which they could have done. The Landlords chose to clean the rental unit themselves rather than have a company attend and clean it which could have cost almost as much as the hotel stay being claimed. I find the cost reasonable and award the Landlords the \$184.24 requested.

***\$1,000.00 loss of rent for November***

Based on the undisputed testimony of the Landlord, I accept that the tenants vacated the rental unit October 29, 2018 without any notice to the Landlords. I find the tenants breached section 45 of the *Act* in this regard.

This was a month-to-month tenancy. The tenants were required to provide one month's notice to end the tenancy. The tenants could not have ended the tenancy in

accordance with the *Act* until November 30, 2018. The tenants are responsible for loss of rent up until November 30, 2018.

Based on the undisputed testimony of the Landlord, I accept that the Landlords re-rented the rental unit for November 15<sup>th</sup> for the same rent amount. Therefore, I find the Landlords lost rent from November 1<sup>st</sup> to November 15<sup>th</sup> being half a month's rent.

Based on the undisputed testimony of the Landlord, I accept that the Landlords re-listed the rental unit for rent immediately after they were done cleaning and that they listed it for the same rent. I find the Landlords minimized their loss.

I am satisfied the Landlords are entitled to half a month's rent for November 1<sup>st</sup> to November 15<sup>th</sup> being \$1,000.00.

Given the Landlords were successful in this application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlords are entitled to \$2,058.53. The Landlords are permitted to keep the security deposit pursuant to section 72(2)(b) of the *Act*. The Landlords are issued a further Monetary Order for \$1,058.53.

### Conclusion

The Landlords are entitled to compensation in the amount of \$2,058.53. The Landlords are permitted to keep the security deposit. The Landlords are issued a further Monetary Order for \$1,058.53. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it 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 *Act*.

Dated: March 25, 2019

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Residential Tenancy Branch