



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S, MNDL-S, FFL

### Introduction

On September 27, 2018, the Landlord 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 apply the security deposit and pet damage deposit towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This Application was set down for a hearing on January 25, 2019 and was subsequently adjourned to be heard on March 12, 2019 as there was not enough time to complete the hearing initially.

The Tenant attended the adjourned hearing; however, the Landlord did not make an appearance. The Tenant provided a solemn affirmation.

All parties 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

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit and pet damage deposit towards these debts?

- Is the Landlord entitled to recover 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.

At the original hearing, all parties agreed that the tenancy started on May 1, 2017 and ended when the Tenant gave up vacant possession of the rental unit on September 2, 2018 due to an Order of Possession that was awarded to the Landlord (the relevant file numbers are listed on the first page of this decision). Rent was established at \$1,400.00 per month, due on the first day of each month. A security deposit of \$650.00 and a pet damage deposit of \$650.00 were also paid.

At the original hearing, all parties agreed that a move-in inspection report was conducted with the Tenant on May 1, 2017. The Landlord advised that he gave the Tenant two opportunities to conduct a move-out inspection report. The Tenant agreed to meet to conduct this report, either by text or verbally, on September 2, 2018 at 5:30 PM. During the inspection, the Tenant became hostile, she said she had to leave abruptly, and then she subsequently left without completing the inspection with the Landlord.

The Tenant advised that she was under the impression that she was supposed to vacate the rental unit by September 2, 2018 and she agreed to meet the Landlord at 5:30 PM to conduct the move-out inspection report. She stated that she met the Landlord to do the move-out inspection report, but he was “picky and bullying” and she did not feel it was necessary to do the inspection. She advised that she had a medical issue that required her to leave before completing the inspection.

The Tenant advised that she texted her forwarding address on September 7, 2018 and then sent a letter with her forwarding address in writing on or around September 12, 2018. The Landlord confirmed that he received the Tenant’s forwarding address in writing via the letter on or around September 15 or 16, 2018.

During the original hearing, only submissions and testimony were taken with respect to the first three claims on the Landlord’s Monetary Order Worksheet. As such, these will be the claims that I will consider in this decision. As the Landlord did not attend the

adjourned hearing, the rest of the Landlord's claims are dismissed without leave to reapply.

The Landlord submitted that he is seeking compensation in the amount of **\$1,145.00** for the cost of drywall repairs, painting, and sink replacement. He stated that things were damaged that he had to pay to have repaired, and he referenced the inspection reports to support this. He submitted that there were numerous nail holes, gouges and holes in the walls, and that the sink is cracked as it looks as though it had been dropped. He included the invoice of the contractor that he hired to complete the work. He stated that the rental unit was renovated six years ago, and he submitted pictures illustrating the damage that he is claiming for.

The Tenant advised that there were no major holes in the walls, just those caused by thumbtacks. She stated that the sink was not cracked as well. She submitted her own pictures of the rental unit with respect to the condition, and she asserts that any damage was pre-existing prior to her moving in.

The Landlord submitted that he is seeking compensation in the amount of **\$575.00** for the cost of cleaning the rental unit and cleaning the carpets, as the Tenant did not leave the rental unit in a rentable state. He submitted a copy of the invoice for the work completed and photos of the condition of the rental unit. He advised that the rental unit also had a dog smell. He stated that the fridge door handle was broken. He was unsure of how much he charged his cleaner but estimates that it was approximately \$25.00 per hour and she completed 15 hours of work. The Landlord also stated that the aluminum tube for dryer vent was torn.

The person that cleaned the rental unit testified that she spent eight to nine hours for two days cleaning the rental unit and that she charges \$25.00 per hour. She stated that there was a lot of dog hair in the cupboards and in the upper bedroom and that there was a "weird smell". She cleaned the walls and the smell did not go away so she cleaned again. She submitted that she had to wipe down everything.

The Tenant advised that she had the carpets cleaned herself, that she wiped down everything, and that this was done professionally with the help of her mother. She also stated that there was no dog smell. She referenced the pictures she submitted of the condition of the rental unit at the end of tenancy, demonstrating that the rental unit was left in a re-rentable condition. She advised that the screw holes in the walls were filled in

and that the stain on the floor was from the previous tenant's ATV. She stated that the fridge handle was over tightened, and it broke during normal use. She taped this together and advised the Landlord, but he did not fix it. She stated that damage to the blinds were pre-existing and she has no idea about a torn dryer vent tube.

The Landlord advised that it is his belief the Tenant's pictures were taken before the tenancy started. He pointed to a picture of a stain on the dryer that is on the Landlord's picture but is not on the Tenant's picture, and this stain is noted in the inspection reports.

The Tenant advised that the pictures were taken on September 2, 2018 and that she spent a considerable time cleaning, with many people to help her. She referenced a condition inspection report from an old tenancy to substantiate how clean she is as a tenant.

Finally, the Landlord submitted that he is seeking compensation in the amount of **\$72.94** for the cost to replace locks on the rental unit. He stated that the Tenant was evicted, and this broke the fixed term tenancy. He advised that the Tenant returned the keys; however, he always changes the locks after every tenancy. As this was a hostile tenancy, it was his belief that he should change the locks to be safe. He submitted a copy of the invoice to substantiate the cost of the new locks.

The Tenant stated that she was not sure why the Landlord would change the locks. She advised that she wanted to move out within one month of the tenancy starting and that this tenancy was a negative with 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 Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the

Landlord must pay double the deposits to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the consistent evidence before me, the Landlord confirmed that he received the Tenant's forwarding address in writing on or around September 15, 2018 and that he made an Application to keep the deposits on September 27, 2018. As the Landlord's Application was within the timeframe to deal with the deposits pursuant to Section 38 of the *Act*, the Landlord did not breach the requirements of Section 38. As such, I find that the doubling provisions of the *Act* do not apply in this instance.

With respect to the Landlord's 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 Landlord's claim in the amount of \$1,145.00 for cost associated with drywall repairs, painting, and sink replacement, I find it important to note that the pictures that the Landlord submitted were black and white, grainy with poor resolution, and difficult to discern. Furthermore, the onus is on the party making the Application to substantiate their claims with evidence. In reviewing the totality of the evidence submitted, I am not satisfied that the Landlord has provided sufficient or compelling evidence to corroborate the significance of his damage claims. As such, I dismiss these claims in their entirety.

With respect to the Landlord's claim of \$575.00 for the cost of cleaning carpets and the rental unit, I have before me pictures from the Landlord that are difficult to identify, but there is affirmed testimony from the person who cleaned the rental unit plus a copy of the invoice of the cleaning. In addition, I do have before me pictures submitted by the Tenant that contradict the Landlord's claims. However, the undisputed evidence is that the parties had a prior Dispute Resolution proceeding where an Order of Possession was awarded on August 31, 2018 and that the Tenant vacated the rental unit by September 2, 2018. I do not find it reasonable that the Tenant would have been able to clean the rental unit and return it to a re-rentable state in such a short amount of time. As such, I find that the Landlord's evidence carries more weight on this point.

However, based on the Landlord's evidence and pictures, I do not find that he has substantiated a claim equivalent to the entire amount that he is seeking. Consequently, I find it is appropriate to award the Landlord a monetary award in an amount that he has established by his evidence, which is equivalent to **\$300.00** for this portion of his claim.

Finally, with respect to the Landlord's claim in the amount of \$72.94 for the cost of replacing the locks, it is not clear to me why the Landlord changes the locks after every tenancy. Section 25 of the *Act* requires that the Landlord change the locks at the start of a new tenancy if the new tenant requests this, and this is a cost that the Landlord must shoulder. As such, I am not satisfied that the Landlord has sufficiently established this claim. As a result, I dismiss this claim in its entirety as well.

As the Landlord was partially successful in this Application, I find that he is entitled to recover the \$100.00 filing fee paid for this Application.

As the Landlord was allowed to keep \$100.00 from the deposits as per a previous decision, this will be reflected in the table below.

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

#### **Calculation of Monetary Award Payable by the Landlord to the Tenant**

Security deposit	\$650.00
Pet damage deposit	\$650.00
Filing fee from a previous decision	-\$100.00
Cleaning	-\$300.00
Filing fee	-\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$800.00</b>

#### Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$800.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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: April 8, 2019

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Residential Tenancy Branch