



# 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**

This hearing dealt with an application by the landlords under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*; and
- Authorization to recover the filing fee for this application pursuant to section 72.

The tenant IR appeared for the tenants (“the tenant”). Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The tenant acknowledged receipt of the landlord’s Notice of Hearing and Application for Dispute Resolution. The landlord acknowledged receipt of the tenant’s evidence. Neither party raised issues of service. I find each party served the other in accordance with the *Act*.

### ***Preliminary Matter:***

At the outset, the parties testified that certain issues regarding the tenancy were the subject of a previous decision filed December 18, 2019, reference to the file number appearing on the first page of this decision.

Issue(s) to be Decided

Is the landlord entitled to:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*; and
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The hearing lasted 84 minutes and each party filed substantial evidence. The tenant submitted many videos which required considerable time to open and view; many of the videos were repetitive and unhelpful. For example, there were several minutes in each of several videos showing the male tenant filling holes in the walls. The tenant also submitted many copies of texts, only some of which relate to this matter.

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant’s and landlord’s claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 15, 2016 and ended on December 23, 2018. The tenant, a husband and wife, and their children lived in a previously unoccupied condo owned by the landlord. Monthly rent in the amount of \$1,456.00 was payable on the first day of each month. A security deposit of \$700.00 was paid by the tenant to the landlord. The landlord holds the security deposit; the tenant has not provided authorization to the landlord to retain the deposit.

The parties agreed no condition inspection was conducted on moving in. The landlord and his wife, the witness AW, testified that the unit was new, had never been occupied before, and was in “perfect condition” when the tenancy started.

The landlord testified he attempted to conduct a condition inspection on December 23, 2018, the day the tenant vacated, but they refused to sign the report.

The landlord claimed the following from the tenant, in support of which he submitted a Monetary Order Worksheet:

ITEM	AMOUNT
Rent for December 2018	\$1,456.00
Reimbursement of cleaning expenses	\$150.00
Drywall repairs and painting	\$150.00
Replacement door handle	\$44.78
Reimbursement strata fine	\$50.00
Reimbursement of the filing fee	\$100.00
<b>Total Monetary Claim</b>	<b>\$1,950.78</b>

Each of the landlord's claims is examined in turn.

#### *Rent for December 2018*

Both parties agree that on November 1, 2018 a sewage back up occurred in the subject rental property affecting the toilet and bathtub in the bathroom. The tenant contacted both the strata manager and the landlord on November 1, 2018 regarding the sewage issue; repair personnel attended immediately. The landlord testified the problem was corrected forthwith. The tenant denied the problem was corrected and filed an application under section 27 claiming the landlord subsequently terminated or restricted a service or facility, that is, the provision of water. This application was served on the landlord on November 14, 2018 and a decision made on December 19, 2018.

The parties agreed the landlord returned the tenant's rent for the month of November 2018. The tenant acknowledged they did not pay rent for the month of December 2018 in the amount of \$1,456.00. The tenant testified that the reason was because the landlord had restricted the provision of water to the unit, although the issue was heard in the previous arbitration.

The previous decision of December 18, 2018 dismissed the tenant's application under section 27 without leave to reapply. The Arbitrator found as follows:

*.... I find that the tenant did not make the landlord aware that the service was restricted. Based on the e-mails submitted into evidence by the parties, I find that the tenant did not inform the landlord that she did not have water at the subject rental property as of November 8, 2018. I find that when the landlord learned that the water was shut off, he immediately rectified the problem. I find that since the landlord did not know of the problem, it cannot be found that he purposefully restricted or terminated the water supply to the tenant. I find that the landlord has not breached section 27 of the Act.*

The landlord testified he served the tenant with a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten-Day Notice") claiming unpaid rent for December 2018 by posting on their door on December 11, 2018. The witness AW confirmed she saw the landlord post the notice. A copy of the Ten-Day Notice with an effective vacancy date of December 24, 2018 was submitted as evidence. The Notice required the tenant to pay the rent and utilities to the landlord or file an Application for Dispute Resolution within five days.

The tenant denied receiving the Notice. The landlord testified the tenant did not pay the rent owing or file an Application for Dispute resolution within five days. The tenant continued in occupation until December 23, 2018.

#### *Reimbursement of cleaning expenses*

The landlord testified that the unit needed considerable cleaning when the tenant vacated. The landlord stated the kitchen appliances needed scrubbing, the cupboards were greasy and dirty, the windows were smudged and greasy, and the unit's floor needed vacuuming and washing. The witness AW confirmed the landlord's testimony. The landlord submitted photographs of the unit supporting his observations that the unit needed cleaning.

The landlord stated that his work schedule allowed him to clean the unit himself; he spent almost 25 hours cleaning the unit. The landlord requested reimbursement in the amount of \$150.00.

The tenant denied leaving the unit unclean. The tenant submitted photographic evidence of the tenant cleaning and stated that the landlord was exaggerating and making up the condition of the unit on vacancy.

*Drywall repairs and painting*

When the tenant vacated, the landlord stated that the walls throughout the unit, except for the bathroom, were punctured by holes the size of a large nail. He estimated there were 8-10 holes in each of the living room and two bedrooms. The landlord guessed that the tenant had adhered bookcases or shelves to the walls with screws or nails. The landlord stated that the tenant mudded some of the holes, but not a significant number; the tenant did not sand or paint.

As well, the landlord stated the walls were dirty, scuffed and damaged. Because of the condition of the walls and the number of holes, he mudded and sanded dozens of holes; then, he painted the entire unit after fixing the wall damage. The landlord stated he was able to get a low price on the repair supplies and paint; he requested reimbursement of \$150.00 for his time and expenses.

The witness AW provided evidence confirming the condition of the walls at the end of the tenancy. The landlord submitted photographs which support his testimony about the condition of the walls.

The tenant denied that the tenant left any holes in the unit's walls. The tenant acknowledged putting screws in some of the furniture to hold it to the wall to protect the children. However, the tenant stated they repaired all the holes before they vacated. The tenant submitted a video of several minutes of the tenant mudding holes but the video is not conclusive that all the walls were fixed or that they were sanded and painted.

The tenant denied the landlord is entitled to any reimbursement for the repairs.

*Replacement door handle*

When the tenant vacated, the landlord observed that the lock set for the front door was missing; there was a hole in the door where it used to be. The landlord stated he replaced the lockset at a cost of \$44.78 and submitted a copy of the receipt as evidence. The witness AW confirmed the landlord's testimony. The landlord submitted a photograph of the door without a lockset.

The tenant stated that the lockset broke during the tenancy. Rather than informing the landlord, the tenant replaced the lockset themselves and took the replacement with them when they left.

The tenant denied that the landlord is entitled to reimbursement for the lockset.

*Reimbursement strata fine*

The landlord submitted a copy of a letter from the strata dated September 17, 2018 notifying him of the imposition of a fine of \$50.00; the letter included a photograph of the hallway in front of the unit upon which the tenant had placed a doormat and items in contravention of the strata bylaws. The landlord sought reimbursement of the cost of the \$50.00 fine incurred during the tenancy.

The tenant denied responsibility to the landlord for reimbursement of the strata fine as the fine was unreasonable and the items were not there very long.

Analysis

I have reviewed all documentary evidence and testimony.

Firstly, I will address the landlord's claim for outstanding rent.

*Outstanding rent*

I find the tenancy agreement between the parties called for the tenant to pay monthly rent of \$1,456.00. I find the tenant did not pay rent on December 1, 2018 as required by the agreement between the parties and as acknowledged by the tenant. I find the tenant continued to occupy the unit until December 23, 2018.

I find the tenant was served with the Ten-Day Notice on December 6, 2018, three days after posting, in accordance with the *Act*. I find the form and content of the Ten-Day Notice complies with section 45 of the *Act*.

The tenant testified that reason for non-payment of rent for December 2018 was the failure of the landlord to provide water. I do not accept the tenant's' submissions in this regard. This issue was resolved in the previous decision which determined that the landlord had not breached section 27 of the *Act*. I do not accept the evidence of the tenant that the tenant had any reason not to pay rent for failure to provide water. I find the tenant has not established any lawful reason for non-payment of rent.

I find the tenant did not pay the overdue rent or dispute the Ten-Day Notice within the five-day period following service.

I find the landlord has met the burden of proof on a balance of probabilities that the tenant owes the landlord \$1,456.00 for outstanding rent for the month of December 2018. I find the landlord is entitled to a monetary award pursuant to section 67 in the amount of \$1,456.00 for unpaid rent for the month of December 2018.

*Landlord's claim for damages and compensation*

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the person who incurred the damage or loss in the same position as if the damage or loss had not occurred, reasonable wear and tear excepted. The person claiming compensation must establish **all** the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. Everything reasonable was done to reduce or minimize (mitigate) the amount of the loss or damage as required under section 7(2) of the *Act*.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award.

Reference to each of the landlord's claims for compensation follows.

*Reimbursement of cleaning expenses*

I have considered all the evidence submitted by the parties, the photographs of the landlord showing the unit needed cleaning and supporting evidence of the landlord's witness AW. I have considered the videos and documentary evidence provided by the tenant showing cleaning activities and repair efforts made at the conclusion of the tenancy. I prefer the landlord's evidence to the tenant's evidence as it is supported by clear photographs and the evidence of the witness AW.

Considering the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the unit needed cleaning when the tenant vacated, the tenant are responsible for the lack of cleanliness, the landlord incurred considerable time in cleaning, and the landlord took all reasonable steps to mitigate expenses by doing the cleaning himself. I find the landlord is entitled to a monetary award in the amount requested of \$150.00 for this aspect of the claim.

*Drywall repairs and painting*

As well, in considering all the above-mentioned evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the drywall needed repairs when the tenant vacated, the tenant is responsible for the damage, the landlord incurred considerable time in repairing and painting, and the landlord took all reasonable steps to mitigate expenses by doing the work himself. I find the damage is more than 'reasonable wear and tear'. I find the landlord is entitled to a monetary award in the amount requested of \$150.00 for this aspect of the claim.

*Replacement door handle*

In considering all the above-mentioned evidence and testimony including the receipt filed by the landlord, I find the landlord has met the burden of proof on a balance of probabilities that the lockset was missing from the front door when the tenant vacated, the tenant are responsible for the missing lockset, as the tenant acknowledged, the landlord incurred the expense of purchasing a replacement lockset, and the landlord took all reasonable steps to mitigate expenses by doing the work himself. I find the landlord is entitled to a monetary award in the amount requested of \$44.78 for this aspect of the claim.

*Reimbursement strata fine*

In considering all the above-mentioned evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the landlord incurred a strata fine as claimed, the tenant is responsible for the strata fine, the landlord incurred the expense of paying the fine, and the landlord took all reasonable steps to mitigate expenses in this regard. I find the landlord is entitled to a monetary award in the amount requested of \$50.00 for this aspect of the claim.

*Security deposit*

Further to section 72, I find the landlord is entitled to offset the monetary award by the amount of the security deposit, being \$700.00.



*Filing Fee*

As the landlord is successful in his claim, I find he is entitled to reimbursement of the filing fee in the amount of \$100.00.

*Summary of award*

I award the landlord a monetary order of **\$1,250.78** as set out below:

ITEM	AMOUNT
Rent for December 2018	\$1,456.00
Reimbursement of cleaning expenses	\$150.00
Drywall repairs and painting	\$150.00
Replacement door handle	\$44.78
Reimbursement strata fine	\$50.00
Reimbursement of the filing fee	\$100.00
(Less security deposit)	(\$700.00)
<b>Total Monetary Award Landlord =</b>	<b>\$1,250.78</b>

Conclusion

The landlord is entitled to a monetary order in the amount of **\$1,250.78**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) to be 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 29, 2019

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Residential Tenancy Branch