



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, MNDL-S, MNRL-S, FFL

### Introduction

On February 6, 2019, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security 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*.

The Landlord attended the hearing; however, the Tenants did not make an appearance. All in attendance provided a solemn affirmation.

The Landlord advised that a Notice of Hearing and evidence package was served to each Tenant by registered mail on February 8, 2019 (a registered mail tracking number is listed on the first page of this decision). The Landlord advised that both packages were returned to sender. Based on this undisputed testimony and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were deemed to have received the Landlord’s Notice of Hearing and evidence package five days after they were mailed out.

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 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.

The Landlord stated that the tenancy started on October 1, 2017 and ended when the Tenants gave up vacant possession of the rental unit on July 9, 2018. Rent was established at \$1,875.00 per month, due on the first day of each month. A security deposit of \$900.00 was also paid. He submitted a copy of this tenancy agreement as documentary evidence.

The Landlord stated that a move-in inspection report was conducted without the Tenants present, on September 25, 2017.

The Landlord stated that the Tenants texted and advised him that they had given up vacant possession of the rental unit on July 9, 2018. He advised that he did not give the Tenants a final opportunity to conduct a move-out inspection, but he completed this report by himself on July 10, 2018. The deficiencies were outlined in this report. A copy of the condition inspection reports was submitted as documentary evidence.

The Landlord confirmed that he received the Tenants' forwarding address in writing via a letter that they hand served, dated October 2, 2018.

He stated that he made an Application to keep this deposit on October 9, 2018 (the relevant file number is listed on the first page of this decision); however, he did not provide proof of service of this Notice of Hearing package during that hearing. As a result, it was determined in this decision that the Landlord's Application would be dismissed with leave to reapply, and it was not specifically stated that there was not an extension of any applicable limitation period to reapply.

The Landlord advised that the Tenants stated that they would be vacating the rental unit, and they requested that they not pay the entire month of July 2018 rent. He told them that if they were out by July 9, 2018, and if they left the rental unit clean, he would attempt to rent the premises out as quickly as possible. The Landlord submitted that he is seeking compensation in the amount of **\$495.00** for the cost of cleaning the rental unit

as the Tenants did not leave the rental unit in a rentable state. He submitted an email from the person that completed the cleaning, which outlined the necessary work completed and included a photo of the condition of the rental unit. This email outlined that the person cleaning the rental unit spent 16 and a half hours at a cost of \$30.00 per hour to bring the rental unit back to a rentable condition.

The Landlord submitted that he is seeking compensation in the amount of **\$70.05** for the cost of replacing the blinds that were left damaged at the end of the tenancy. He advised that the blinds were missing parts and were broken, requiring replacement of the whole set. He stated that the blinds were five years old. As per the receipt submitted as documentary evidence, he replaced the blinds with curtains. He also referenced a picture submitted as evidence to support his position on the damage.

The Landlord submitted that he is seeking compensation in the amount of **\$80.00** for his cost of plastering, sanding, and repairing fist sized holes in the walls. He advised that this work took him two hours to complete and the amount sought includes the cost of materials. He referenced a picture submitted as documentary evidence to support this claim.

The Landlord submitted that he is seeking compensation in the amount of **\$400.00**, because the Tenants only paid \$1,475.00 of July 2018 rent. He stated that they did not give any written notice to end their tenancy.

The Landlord submitted that he is seeking compensation in the amount of **\$80.00** for the cost to remove and dispose of treated wood that was left behind by the Tenants. He submitted a photo of the items left; however, he did not provide any evidence of the cost to dispose of these items. His request for compensation is to cover the time and expense required to dispose of this refuse.

Finally, the Landlord submitted that he is seeking compensation in the amount of **\$100.00** to recover the cost of the filing fee for this Application and **\$15.82** for the cost of registered mail for the Notice of Hearing packages.

### 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.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act* and *Regulations*. However, these Sections pertain to a Landlord's right to claim for damage, and as the Landlord also applied for rent owing, which is not a damage claim, the Landlord still retains a right to claim against the security deposit.

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 Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent evidence before me, the Landlord confirmed that he had the Tenants' forwarding address in writing on October 2, 2018 and that he made an Application to keep the deposit on October 9, 2018. However, the Landlord failed to prove service in that hearing and as a consequence, that Application was dismissed with leave to reapply. As this February 4, 2019 decision did not expressly limit the Landlord's timeframe to reapply, I am satisfied that his initial filing was within the timeframe to deal with the deposit pursuant to Section 38 of the *Act*. Thus, I am satisfied that the Landlord complied with the requirements of Section 38 and the doubling provisions do not apply in this circumstance.

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 of \$495.00 for the cost of cleaning the rental unit, the Landlord relied on a move-in and move-out inspection report that was not completed with the Tenants in accordance with the *Act* and *Regulations*, an email from the cleaners outlining the details of the work performed to clean the rental unit, and one

picture that the cleaners submitted was “representative of under and behind the other appliances in the house”. While the person cleaning the rental unit outlined the requirements for bringing the rental unit back to a re-rentable condition, the condition inspection reports cannot be relied upon heavily as the Landlord did not conduct these inspections with the Tenants. Furthermore, there is only one picture to substantiate the cleaning claims. However, I am satisfied on a balance of probabilities that the Tenants more likely than not did not leave the rental unit in a suitable condition for re-rental. Based on the minimal evidence before me and the undisputed testimony, I am satisfied that the Landlord has substantiated a monetary award in the amount of **\$210.00** only.

With respect to the Landlord’s claims in the amount of \$70.05 for the cost of replacing the broken blinds and \$80.00 for the cost of repairing the walls, while the condition inspection reports cannot be relied on heavily, I do not find it plausible that the blinds were rented to the Tenants in the condition that they were left or that the walls had the sizable holes in them at the beginning of the tenancy. As such, on a balance of probabilities, I am satisfied that the Tenants were responsible for this damage. Consequently, I find that the Landlord has established that he should be granted a monetary award in the amount of **\$150.05** for these portions of his claim.

Regarding the Landlord’s claim in the amount of \$400.00 for rent arrears of July 2018, as this amount is undisputed and unpaid, I am satisfied that the Landlord has established that he should be granted a monetary award in the amount of **\$400.00** to cover the arrears.

With respect to the Landlord’s claim of \$80.00 for the cost of disposing of items left behind outside the rental unit, I am satisfied from the undisputed evidence that these items were left behind by the Tenants. However, as the Landlord has not provided any evidence to substantiate the cost of disposing of these items, I find that the Landlord should be awarded what would be considered a reasonable amount to rectify this issue. As such, I am satisfied that the Landlord has established that he should be granted a monetary award in the amount of **\$50.00** for this portion of his claim.

Finally, with respect to the Landlord’s claim in the amount of \$15.82 for the cost of sending the Notice of Hearing packages by registered mail, as the *Act* does not provide compensation for such costs, I dismiss this claim in its entirety.

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. Under the offsetting provisions of

Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of the debts outstanding.

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

**Calculation of Monetary Award Payable by the Tenants to the Landlord**

Cleaning	\$210.00
Replacement of broken blinds	\$70.05
Wall repairs and painting	\$80.00
Arrears associated with July 2018 rent	\$400.00
Disposal of refuse	\$50.00
Less the security deposit	-\$900.00
Filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$10.05</b>

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$10.05** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: June 7, 2019

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Residential Tenancy Branch