



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S, MNDL-S, FFL

### Introduction

On February 23, 2019, 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 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 hearing; however, the Tenant did not make an appearance. All parties provided a solemn affirmation.

The Landlord advised that she served the Notice of Hearing package to the Tenant by registered mail on March 2, 2019 (the registered mail tracking number is on the first page of this decision). Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant has been deemed to have received the Notice of Hearing package five days after it was mailed.

She also advised that she served the Tenant her evidence by posting it to the Tenant’s door on or around March 9, 2019. As service of this evidence complies with the time frame requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

All parties acknowledged the evidence submitted and 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 rent arrears?
- 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 Tenant had his own, separate rental unit, that the tenancy started on September 1, 2018, and that the tenancy ended when the Tenant vacated the rental unit on February 13, 2019 based on a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"). Rent was established at \$800.00 per month, due on the first day of each month. A security deposit of \$400.00 was also paid. A copy of the signed tenancy agreement was submitted into evidence.

She advised that she did not conduct a move-in inspection report at the beginning of the tenancy with the Tenant. Furthermore, she stated that she sent several texts to the Tenant to participate in a move-out inspection report at the end of tenancy. However, she acknowledged that she never completed either inspection report with the Tenant. As well, she stated that she never provided the Tenant with a final opportunity to conduct a move-in or move-out inspection.

She stated that a forwarding address in writing was provided in a letter on January 30, 2019.

She submitted that she was seeking rent arrears in the amount of **\$800.00** for February 2019 rental loss as the Tenant gave written notice to end his tenancy on January 30, 2019 to vacate the rental unit by February 28, 2019. However, the Tenant did not pay rent for February 2019 and as a result, she served the Notice on February 2, 2019. She stated that Tenant moved out of the rental unit on February 13, 2019, based on this Notice.

The Landlord advised that the rental unit was furnished at the beginning of the tenancy and everything provided was brand new. She referenced pictures submitted as documentary evidence to support this position. However, the Tenant left the provided items in the rental unit in an unsalvageable state.

She stated that she was seeking compensation in the amount of **\$300.00** for the cost to replace the brand new mattress, box spring, and frame as they were not in a re-rentable condition. To lower costs, she purchased a used mattress, box spring, and frame to replace what was originally provided. As these were used, she did not have a receipt to confirm purchase. She also referenced pictures submitted as documentary evidence to support her position.

She stated that she was seeking compensation in the amount of **\$50.00** for the cost to replace missing or damaged dishes. To lower costs, she purchased used dishes to replace what were originally provided. As these were used, she did not have a receipt to confirm purchase. She also referenced pictures submitted as documentary evidence to support her position.

She stated that she was seeking compensation in the amount of **\$200.00** for the cost to replace a table and chairs. To lower costs, she purchased a used table and chairs to replace what were originally provided. As these were used, she did not have a receipt to confirm purchase. She also referenced pictures submitted as documentary evidence to support her position.

Finally, she stated that she was seeking compensation in the amount of **\$50.00** for the cost to clean the rental unit at the end of the tenancy as she alleges that the Tenant did not do so adequately, and it was left filthy. She submitted that she spent 5 hours of her own time cleaning the rental unit. In addition to the garbage and dirtiness of the rental unit, she advised that the Tenant rubbed black soot on everything and left cat feces behind. She also referenced pictures submitted as documentary evidence to support her position.

### 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 23 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed day. As well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection report.

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. However, these sections pertain to a Landlord's right to claim for damage, and as the Landlord also applied for rent owing and not solely damage claims, 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 Tenant's 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 Tenant, pursuant to section 38(6) of the *Act*.

The undisputed evidence is that the forwarding address in writing was provided to the Landlord on January 30, 2019 and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on February 13, 2019. As such, the Landlord made her Application within the 15-day frame to claim against the deposit. As the Landlord was entitled to claim against the security deposit still, and as she complied with Section 38 (1) of the *Act* by making a claim within 15 days, I find that she has complied with the requirements of the *Act* and therefore, the doubling provisions do not apply.

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 for the February 2019 rent, the undisputed evidence before me is that the Tenant gave written Notice on January 30, 2019 to end his tenancy on or before February 28, 2019. Section 45 of the *Act* requires that the Tenant provide one, whole month notice in writing to end the tenancy. As such, I am satisfied that the Tenant would be responsible for paying February 2019 rent. Consequently, I am satisfied that the Landlord has substantiated a claim for outstanding rent, and I grant the Landlord a monetary award in the amount of **\$800.00**.

Regarding the Landlord’s claims for the costs associated with replacing damaged or missing items provided at the start of the tenancy and for cleaning, I find it important to note that the Landlord did not have a move-in inspection report to rely on, and while some items provided at the start of tenancy were listed on the tenancy agreement, a comprehensive list of exactly what was provided to the Tenant was not submitted as documentary evidence. While the Landlord submitted three pictures as documentary evidence supporting the alleged condition of the rental unit prior to the tenancy starting, I do not find that the pictures satisfy me that the bed was “brand new” as the Landlord claimed. Furthermore, the pictures do not show any of the dishes provided at the start of the tenancy, nor do they depict the table and chairs. Moreover, the Landlord has not provided any pictures of the items she claimed to have purchased to replace the items that she claimed to have disposed of, nor has she provided any proof of purchasing these items.

However, based on the evidence before me, I am satisfied on a balance of probabilities that the Tenant, more likely than not, did not leave the rental unit in a suitable condition for re-rental. Although, I do find that the lack of a move-in inspection report, a comprehensive list of items provided to the Tenant of the furnished unit, and the absence of any photographic evidence or proof of purchase of new items reduces, in my mind, the amount of the claim that the Landlord sufficiently substantiated. As well, I do find that the Tenant, more likely than not, did not leave the rental unit in a clean condition. As such, I am satisfied that the Landlord has provided enough evidence to corroborate a nominal monetary award in the amount of **\$100.00** for these claims only.

As the Landlord was partially successful in her claims, I find that the Landlord 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 Tenant to the Landlord**

Rent for February 2019	\$800.00
Cleaning and damage compensation	\$100.00
Filing fee	\$100.00
Security deposit	-\$400.00
<b>TOTAL MONETARY AWARD</b>	<b>\$600.00</b>

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$600.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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 14, 2019

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Residential Tenancy Branch