



# 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

This teleconference hearing was scheduled in response to an application by the Landlords under the *Residential Tenancy Act* (the “Act”) for monetary compensation, compensation for damages, compensation for unpaid rent, to retain the security deposit towards compensation owed, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

An agent for the Landlords (the “Agent”) was present for the teleconference hearing, while no one called in for the Tenant. The Agent was affirmed to be truthful in her testimony and stated that the Tenant was served with the Notice of Dispute Resolution Proceeding package by registered mail and with the evidence package by x-press post with a signature required. The Agent stated that she confirmed on the Canada Post website that both packages were delivered. As such, I accept the affirmed testimony of the Agent and find that the Tenant was duly served in accordance with Sections 88 and 89 of the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary Matters

The Application for Dispute Resolution listed the company name for the Landlord as well as a name of an individual Landlord. The Agent clarified that the individual name was listed as one person but should actually be stated as two separate names. As such, the application was amended to name the company Landlord as well as the two

individual Landlords. This amendment was made pursuant to Section 64(3)(c) of the *Act*.

The Landlords filed the Application for Dispute Resolution seeking an amount of \$26,865.26. However, a Monetary Order worksheet was submitted stating that an amount of \$35,000.00 was being claimed. During the hearing the Agent clarified that an additional two months of rent was being sought and that they were no longer seeking unpaid utility bills as noted on the Application.

However, as an amendment to the application was not submitted, I find that I cannot consider an amount in excess of that claimed on the application as I find it may unfairly prejudice the Tenant to do so. As stated by rule 2.2 of the *Rules of Procedure*, a claim is limited to what is stated on the application.

Therefore, I will consider the claim for damages and one month of rent as stated on the application and will not consider the additional two months of rent noted on the Monetary Order worksheet. The Tenant has a right to know the claims against them. As a copy of the application was sent to the Tenant I find that the Tenant would be aware of the claims as stated on this application and therefore this decision will outline these claims only.

I accept that the Landlords are not seeking compensation for utility bills at this time. However, the Landlords are at liberty to file a new Application for Dispute Resolution up to the maximum amount of \$35,000.

#### Issues to be Decided

Are the Landlords entitled to monetary compensation?

Are the Landlords entitled to monetary compensation for damages?

Are the Landlords entitled to compensation for unpaid rent?

Should the Landlords be authorized to retain the security deposit towards compensation owed?

Should the Landlords be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The Agent provided undisputed testimony regarding the tenancy which was confirmed by the tenancy agreement that was included as evidence. The tenancy started on June 1, 2017 and the Tenant moved out on February 25, 2019. On June 1, 2018 a new fixed term tenancy agreement was entered into, set to end on May 31, 2019. Rent in the amount of \$13,520.00 was due on the first day of each month and a security deposit of \$6,760.00 was paid at the outset of the tenancy. The Agent confirmed that the Landlords are still in possession of the full security deposit amount.

The Agent stated that they received email notice from the Tenant in February 2019 that the Tenant would be moving out the following week. She stated that on February 25, 2019 a move-out Condition Inspection Report was completed with the Tenant and that the Tenant's forwarding address was provided on the same day.

The Condition Inspection Report was submitted into evidence and was signed on June 28, 2017 at move-in and February 25, 2019 at move-out. The Agent stated that the Tenant did not agree to a specific amount to be retained from the security deposit but had agreed to the damage noted on the report and to pay for the repairs. The Agent stated that they sent the repair bills to the Tenant but did not receive payment or permission to deduct from the security deposit. The Condition Inspection Report at move-out states the following:

*Kitchen countertop chip/ two small damages on cabinet doors/ master bedroom damage/ large scratches on the hardwood floor/ TV spots x 4 need to be repaired/ the downstairs bedroom lock/ the mark in the entrance closet/ several light bulbs need to be replaced.*

Photos of the kitchen countertop, floor, cabinets and the wall areas where the TV mounts were removed were submitted into evidence from the Landlords. The Agent referenced the two invoices submitted as evidence. The first one, dated February 28, 2019 was for an amount of \$1,218.00. On the invoice it is noted that the countertop was repaired, the two chips on the kitchen cabinets were repaired, and that a repair of the scratches on the master bedroom floor were repaired.

The second invoice was dated February 20, 2019 in the amount of \$524.26. On the invoice it is noted that four wall areas were patched and painted around where the TV

mounts had caused damage, 9 halogen lightbulbs were replaced, 4 candle bulbs in the wall sconces were replaced, and 14 spot light bulbs were replaced throughout the unit.

The Landlords are seeking a total of \$1,742.26 for reimbursement for the two invoices that were paid to repair the damages in the rental unit.

As well as compensation for repairs, the Landlords are seeking compensation for unpaid rent. As stated, the Landlords claimed one month of rent on the application although noted they are due three months of unpaid rent.

The Agent stated that as soon as they received notice from the Tenant they began advertising the rental unit. She stated that they were unable to rent the unit until July 1, 2019, after lowering the monthly amount they were advertising. The Agent testified that they initially advertised the rental unit for the same monthly rent the Tenant was paying but lowered the amount when they were not able to find new tenants. The Agent stated that the advertisements were posted on their company website as well as at least three other online sites.

Copies of the advertisements submitted show the initial advertisement for rent in the amount of \$13,520.00 in February 2019. An advertisement from March 2019 shows the listing at \$12,950.00 and emails from May 10, 2019 and May 30, 2019 show that the Landlord lowered the advertised rent to \$11,800.00 and then \$10,800.00.

### Analysis

Regarding the Landlords' claims for compensation, Section 7 of the *Act* states the following:

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I accept the undisputed testimony of the Landlord that the Tenant caused damage to the rental unit and that the Landlord incurred costs to repair this damage. As stated in

Section 37 of the *Act*, a tenant must leave the rental unit reasonably clean and undamaged at the end of the tenancy.

I accept the evidence of the Landlord and find that the Condition Inspection Report signed at move-in and move-out establishes that the damage occurred during the tenancy and therefore find that the Tenant was in breach of the *Act*. I also find that despite not agreeing to pay a specific amount for the repairs, the Tenant signed their agreement on the Condition Inspection Report to the damages as stated by the Landlord.

As I find evidence before me of the value of the Landlord's loss through the two invoices submitted for repairs in the amount of \$1,218.00 and \$524.26, I accept the amounts claimed and award a total of \$1,742.26 to the Landlords as compensation for repairs.

Regarding the Landlord's claim for unpaid rent, I refer to Section 45(2) of the *Act* which states that a fixed-term tenancy cannot be ended prior to the end of the fixed term as specified in the tenancy agreement. Therefore, by ending the tenancy prior to May 31, 2019, I find that the Tenant was in breach of the *Act* and the tenancy agreement and therefore must compensate the Landlord for any losses that occurred as a result.

As stated in Section 7 of the *Act*, a party claiming a loss must also take reasonable steps to minimize their losses. I accept the testimony of the Agent and the evidence before me that shows that the Landlords advertised the rental unit beginning in February 2019. I also find that by advertising for the same monthly rent amount that the Tenant was paying and then reducing the monthly rent amount when the unit did not rent, the Landlords did what was reasonable to reduce their potential losses.

Therefore, I find that the Agent has established that the Landlords should be compensated for March 2019 rent in the amount of \$13,520.00, as claimed on the application.

As stated in Section 38(1) of the *Act*, a landlord must return the security deposit or file a claim against it within 15 days of the later of the date the tenancy ends or the date the forwarding address was provided in writing. I accept that the forwarding address was provided on February 25, 2019, the same day the tenancy ended. As the Landlords applied on March 1, 2019, I find that they were in compliance with Section 38(1) of the *Act* and may retain the security deposit towards the total amount owing.

As the Landlords were successful with the application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Landlords are granted a Monetary Order in the amount outlined below:

Counter, cabinet and floor repairs	\$1,218.00
Wall patching/painting and lightbulb replacement	\$524.26
March 2019 rent	\$13,520.00
Recovery of filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$6,760.00)</i>
<b>Total owing to Landlords</b>	<b>\$8,602.26</b>

### Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a **Monetary Order** in the amount of **\$8,602.26** as outlined above. The Landlords are provided with this Order 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 24, 2019

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Residential Tenancy Branch