



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDL, MNDCL, FFL

### Introduction

On March 5, 2019, the Landlords 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 Landlords attended hearing with R.M. attending as an agent for the Landlords. J.N. attended the hearing to represent the Tenant. All parties provided a solemn affirmation.

The Landlords advised that they served one Notice of Hearing package to the Tenant by hand on March 8, 2019 and J.N. confirmed that this was received. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant has been served the Notice of Hearing package. However, as the Landlords named four respondents in their Application but only served Tenant D.N., the other Tenants have been removed from the style of cause of this decision, and any monetary orders awarded will only be enforceable on Tenant D.N.

The Landlords also advised that they served Tenant D.N. their evidence by hand on March 8, 2019; however, the Landlords stated that they did not confirm if he could review the video evidence submitted. As the Landlords did not confirm that the Tenant had the appropriate playback device to view the video evidence in compliance with Rule 3.10.5 of the Rules of Procedure, I have accepted all of the Landlords’ evidence with the exception of the videos. Those have been excluded and will not be considered when rendering this decision.

J.N. advised that the Tenant did not submit any evidence for consideration on this file.

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.

All parties agreed that the tenancy started on August 4, 2018, and that the tenancy ended when the Tenant vacated the rental unit on November 11, 2018 by way of a Mutual Agreement to End Tenancy. Rent was established at \$1,300.00 per month, due on the first day of each month. A security deposit of \$650.00 was also paid.

All parties agreed that a move-in inspection report was not conducted at the beginning of the tenancy, and a move-out inspection report was not conducted at the end of the tenancy.

It appeared as if both parties agreed that the Tenant did not provide a forwarding address in writing, but his new address was on a prior Application for Dispute Resolution that he made (the relevant file number is on the first page of this decision).

The Landlords submitted that they were seeking compensation in the amount of **\$1,300.00** for November 2018 rental loss as the Tenant did not pay November 2018 rent and the Landlords could not re-rent the rental unit until the next month. J.N. confirmed that the Tenant did not pay any rent in November 2018 and that a Mutual Agreement to End a Tenancy was signed effective for November 11, 2018.

The Landlords advised that they were seeking compensation in the amount of **\$1,500.00** due to Landlord M.L. suffering from depression on account of the stress of this tenancy situation.

Finally, the Landlords are seeking compensation in the amount of **\$2,000.00** for the cost to clean the rental unit and fix damage at the end of the tenancy as she alleges that the Tenant did not do so adequately. However, the Landlords could not specifically state how many hours were spent cleaning, painting, or fixing damage. As well, they did not submit any receipts for any work done or any repairs completed to support their claims. However, the Landlords submitted some pictures as documentary evidence and referred to them to support their claims.

J.N. advised that they cleaned the rental unit before they left, that they did not cause any damage to the rental unit, and that they came back after the tenancy ended to dispose of any garbage that was left behind.

### 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 Landlords 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 Landlords 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 Landlords 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 Landlords to claim against a security deposit for damage is extinguished if the Landlords do not complete the condition inspection reports. However, these sections pertain to a Landlords' right to claim for damage, and as the Landlords also applied for rent owing and not solely damage claims, the Landlords still retain a right to claim against the security deposit.

Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive 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 Landlords to retain the deposit. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposit, and the Landlords must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

The undisputed evidence is that a forwarding address in writing was not provided to the Landlords. While a forwarding address was provided by the Tenant on his Application for Dispute Resolution, this does not meet the requirement of a separate written notice and does not constitute providing the Landlords with a forwarding address. As such, I deem that the Landlords have now been served with the forwarding address and must deal with the deposit pursuant to Section 38 of the *Act*. I find that **five days from the date of this hearing** will become the ordered date the Landlords received the Tenant's forwarding address. As such, any amount of the deposit remaining in this decision must be dealt with in accordance with Section 38 of the *Act*.

With respect to the Landlords' 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 Landlords' claim for the November 2018 rent, the undisputed evidence before me is that the parties signed a Mutual Agreement to End a Tenancy effective for November 11, 2018 and that the Tenant did not pay any rent for November 2018. As I am satisfied that the Tenant occupied the rental unit for 11 days in November, I find that the Tenant owes the Landlords an equivalent amount of rent totalling \$476.67 ( $\$1,300.00 / 30 \times 11$ ). Consequently, I am satisfied that the Landlords have substantiated a claim for outstanding rent, and I grant the Landlords a monetary award in the amount of **\$476.67**.

Regarding the Landlords' claims for \$1,500.00 for the costs associated with depression and stress, as there are no provisions in the *Act* that provide compensation for these types of losses, I dismiss this claim in its entirety.

With respect to the Landlords' claims of \$2,000.00 for the costs associated with cleaning and damage repair, I find it important to note that the Landlords did not have a move-in inspection report or move-out inspection report to rely on. While they did submit some pictures, I do not find that the pictures satisfy me that the rental unit was left in the condition that they allege. Furthermore, the Landlords could not specifically advise of how many hours it took to clean, paint, or repair the rental unit or provide any receipts or invoices to substantiate their losses. As the burden of proof is on the party making the Application, I am not satisfied that the Landlords have provided enough compelling evidence to corroborate a monetary award. Consequently, I dismiss this portion of the Landlords' claim in its entirety.

As the Landlords were partially successful in their claims, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this application.

#### **Calculation of Monetary Award**

Rent for November 1 – 11, 2018	\$476.67
Filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$576.67</b>

As the security deposit being held by the Landlord is \$650.00, pursuant to Sections 67 and 72 of the *Act*, I allow the Landlords to retain \$576.67 of this deposit in satisfaction of the debts outstanding.

The Landlords must deal with the remaining **\$73.33** of the deposit in accordance with Section 38 of the *Act*. As per my findings above, I find that **five days from the date of this hearing** will become the ordered date the Landlords received the Tenant's forwarding address. As such, this remaining amount of the deposit must be dealt with in accordance with Section 38 of the *Act*.

#### **Conclusion**

The Landlords are allowed to retain **\$576.67** of the deposit to satisfy the debts awarded to them.

**Five days from the date of this hearing** will become the ordered date the Landlords received the Tenant's forwarding address. As such, the Landlords must then deal with the remaining **\$73.33** of the deposit in accordance with Section 38 of the *Act*.

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 25, 2019

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Residential Tenancy Branch