



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DVP PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

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

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent, for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 19 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he is a 1/3 partner in the landlord company named in this application and that he had permission to speak on its behalf at this hearing.

The landlord stated that he personally served both tenants with a separate copy of the landlord's application for dispute resolution hearing package on April 30, 2019. In accordance with section 89 of the *Act*, I find that both tenants were personally served with the landlord's application on April 30, 2019.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to rental unit, and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' security deposit?

Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

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

The landlord testified regarding the following facts. This tenancy began on June 1, 2018, for a fixed term of one year ending on June 1, 2019. The tenants vacated the rental unit on October 12, 2018. Monthly rent of \$2,150.00 was payable on the first day of each month. A security deposit of \$1,075.00 was paid by the tenants and the landlord continues to retain this deposit. Both parties signed a written tenancy agreement. Move-in and move-out condition inspection reports were completed for this tenancy. The tenants did not provide a written forwarding address to the landlord. The landlord filed this application to retain the tenants' deposit on April 18, 2019. The landlord had permission to keep the tenants' entire deposit with a balance owing of \$1,313.00, as per a letter signed by the tenants on April 30, 2019.

The landlord seeks a monetary order of \$2,258.00 plus the \$100.00 application filing fee. The landlord initially applied for a loss of October 2018 rent of \$2,180.00, in error, claiming that it should have been \$2,150.00.

The landlord seeks October 2018 rent of \$2,150.00, claiming that the tenants did not pay this amount. He stated that he had to advertise to find new tenants and new tenants were found for a fixed term of one year as of November 1, 2018, at a higher rent of \$2,250.00 per month. The landlord provided a copy of the written tenancy agreement with the new tenants.

The landlord also seeks junk removal fees of \$108.00, stating that the tenants signed a yard agreement on September 5, 2018, which was provided for this hearing, requiring them to pay fees if they did not return the yard to the same condition as the photographs attached to the yard agreement. The landlord provided photographs and text messages from the basement suite tenant, who found a number of items left behind by the tenants after they vacated the rental unit. The landlord maintained that he did not get an invoice for the junk removal but he got a text message from the contractor, which he provided, asking him to e-transfer \$108.00, so he did so on October 13, 2018.

### Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Residential Tenancy Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord \$108.00 for junk removal. The tenants signed a yard agreement on September 5, 2018, with photographs attached, confirming they would keep the yard in the same clean condition at the end of the tenancy. The landlord provided photographs of the items left behind by the tenants at the end of the tenancy and text messages from the other tenant in the basement suite who found the items. The landlord provided a text message from the contractor who cleared the items for \$108.00. The landlord provided affirmed verbal testimony that this amount was paid to the contractor by e-transfer on October 13, 2018.

I award the landlord \$2,150.00 for October 2018 rent. I find that the tenants were obligated to pay this rent as per section 26 of the *Act* and their written tenancy agreement. The tenants were still living in the rental unit until October 12, 2018. Although they vacated prior to the end of October 2018, I find that the landlord was unable to rent the unit until November 1, 2018, since he had to remove the junk items left behind by the tenants, advertise the unit, complete showings, find new tenants, and sign a new tenancy agreement.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants.

The landlord continues to hold the tenants' security deposit of \$1,075.00. Over the period of this tenancy, no interest is payable on the deposits. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants'

entire security deposit of \$1,075.00. I issue a monetary order to the landlord in the amount of \$1,283.00, for the balance.

Conclusion

I order the landlord to retain the tenants' entire security deposit of \$1,075.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$1,283.00 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: July 26, 2019

---

Residential Tenancy Branch