



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

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

- Authorization to recover the filing fees from the tenant pursuant to section 72;
- A monetary order for compensation and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for damages to the rental unit and authorization to retain a security deposit pursuant to sections 38 and 67; and
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67.

The tenant did not attend the hearing, although I left the teleconference hearing connection open until 1:42 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that he served the tenant with the Notice of Dispute Resolution Proceedings by sending it twice by registered mail to the address provided to him on the tenant's notice of forwarding address dated March 10, 2019. The two tracking numbers are listed on the cover page of this decision. The first listed package was sent on March 22, 2019 and was unclaimed; the second package was claimed by the tenant and was sent on April 1, 2019. I find the tenant deemed served with the Notice of Dispute Resolution Proceedings on April 6, 2019, five days after being sent by registered mail in accordance with sections 89 and 90 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to compensation for cleaning and damage to the rental unit?  
Is the landlord entitled to compensation for unpaid rent for an overholding tenant?  
Can the landlord retain all or part of the tenant's security deposit?

Can the landlord recover the filing fee?

Background and Evidence

The landlord provided the following undisputed testimony. The tenancy involves a cabin located on the landlord's property. The month to month tenancy began on April 28, 2017 with rent set at \$700.00 per month payable on the first day of each month. The landlord collected a security deposit in the amount of \$350.00 which he still holds. The landlord testified the parties did not sign a condition inspection report at the commencement of the tenancy as the tenant was 'satisfied with the condition' of the rental unit.

The tenant served the landlord with a One Month Notice to End Tenancy approximately a month before the end of February. The effective date on the tenant's Notice was February 28, 2019.

On February 7<sup>th</sup>, the tenant locked herself out and sought the assistance of a neighbour. While the neighbour was speaking to the landlord, the tenant attempted to access the rental unit by removing a window screen and opening the window to the unit. The landlord alleges the window screen was damaged as a result of the tenant's actions and were sloppily repaired with duct tape at the end of the tenancy. A photograph of the window screen was provided as evidence. The landlord has since repaired it himself and estimates it took him an hour to do the repairs.

The tenant did not move out on February 28<sup>th</sup>, the effective date provided on her notice. On that day, the landlord emailed the tenant advising her she was required to move out and the tenant responded with the following, *"In lieu of 2 week rent you have my deposit"*. A copy of the email exchange was provided by the landlord.

The landlord testified the tenant advised him she was going to stay in the until March 15<sup>th</sup> despite the Notice she gave. However, on March 5<sup>th</sup> the tenant showed up at his door and gave him a package containing the keys to the rental unit and left. The landlord seeks five days of rent for the days the tenant overheld the tenancy.

Sometime later, the landlord was provided with the tenant's forwarding address. The landlord does not recall when he was notified, or whether the letter was personally delivered or sent by mail however the date of the letter with the forwarding address is March 10<sup>th</sup>. The landlord filed for dispute resolution to retain the security deposit on March 19<sup>th</sup>.

When the tenant left, the landlord testified the condition of the unit was unclean. The landlord provided photographs to indicate the rugs were in need of laundering, the oven was not cleaned, the shower shelf appeared unclean, there was dust and debris throughout the unit. The landlord hired a professional cleaner to do the cleaning and he was invoiced \$72.50 for the cleaning. The landlord also had to launder the rugs himself and estimates it cost \$37.00 to do this.

### Analysis

- Overholding tenant

Residential Tenancy Branch Policy Guideline PG-3 [Claims for Rent and Damages for Loss of Rent] provides guidance to landlords and tenants regarding situations where a landlord seeks to hold a tenant liable for loss of rent after the end of a tenancy. (reproduced below)

Section 44 of the *Residential Tenancy Act* sets out when a tenancy agreement will end. A tenant is not liable to pay rent after a tenancy agreement has ended pursuant to these provision, however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises. In certain circumstances, a tenant may be liable to compensate a landlord for loss of rent.

Based on the evidence of the landlord, I am satisfied the tenant gave proper notice to end the tenancy on February 28<sup>th</sup> and remained in possession of the premises for an additional five days. The landlord is entitled to the equivalent of five days rent, calculated as: [\$700.00 per month / 31 days in March (multiplied by) 5 days = \$112.90]. I award the landlord compensation in the amount of **\$112.90**.

### Window Screen Repair

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

The landlord has provided undisputed testimony and corroborated his testimony with photographs of the window screen he says was damaged by the tenant. I am satisfied he mitigated the damage by repairing it himself, without incurring further expenses. I find it reasonable it took one hour to do the repairs and I award compensation to the landlord in the amount of **\$40.00** for this.

- Cleaning Invoice

Residential Tenancy Branch Policy Guideline PG-1 states the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs

where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is not responsible for reasonable wear and tear to the rental unit or site, or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act*.

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

I have reviewed the photographs submitted by the landlord and find the condition of the rental unit at the end of the tenancy meets the standard as set out in the policy guideline of "reasonable health, cleanliness and sanitary standards". While the conditions may not be up to the standard set by the landlord, the tenant is not responsible for bringing the condition of the unit up to a pristine, move-in condition.

Further, without the benefit of a condition inspection report to show the condition of the rental unit at the commencement of the tenancy, I find the landlord has not met the burden to prove the rental unit has been subject to any damage beyond normal wear and tear. I decline to award the landlord the invoice for cleaning.

- Launder Rugs

PG-1 indicates the tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

The landlord has provided testimony and photographs to indicate the tenant did not clean the carpets at the end of the tenancy which lasted for more than one year. I find the estimated cost of **\$37.00** to have this work done to be reasonable and award the landlord that amount.

- Filing fee

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

- Return of security deposit

The landlord filed for dispute resolution to retain all or part of the security deposit within 15 days of being served with the tenant's forwarding address. Pursuant to section 72 of the *Act*, I order that the landlord retain a portion of the tenant's security deposit as follows:

Item	Amount
Security Deposit	\$350.00
5 days rent (March 1 – 5)	(\$112.90)
Window screen repair	(\$40.00)
Launder rugs	(\$37.00)
Filing fee	(\$100.00)
<b>Return to tenant</b>	<b>\$60.10</b>

Conclusion

I order that the landlord return \$60.10 of the tenant's security deposit.

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 10, 2019

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Residential Tenancy Branch