



# 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 Landlord 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.

The initial hearing was scheduled for May 21, 2019. The Landlord was present for the first hearing and the hearing was adjourned for the Landlord to provide proof of service. This decision should be read in conjunction with the interim decision dated May 21, 2019. The Tenant did not attend the initial hearing on May 21, 2019.

The reconvened hearing was scheduled for July 8, 2019 and both the Landlord and Tenant were present. At this hearing the Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence by email. Following the initial hearing the Landlord also submitted copies of the emails that were sent to the Tenant with the notice of hearing documents and copies of her evidence.

The Landlord applied for a substituted service order and was granted permission to serve the Tenant by email through a decision dated February 5, 2019. Therefore, I find that the Tenant was sufficiently served for the purposes of this *Act*, pursuant to Section 72(2)(b). The Tenant did not submit any evidence prior to the hearing.

At the reconvened hearing the parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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 Landlord served Tenant E.Q. by email after receiving a substituted service order. The Tenant was present at the reconvened hearing on July 8, 2019 and confirmed receipt of the documents by email. As I have no evidence before me that the second Tenant/Respondent named on the application, D.Q., was served, and Tenant D.Q. was not present at either hearing, I find that Tenant D.Q. should be removed as a respondent on the application.

As stated by rule 3.1 of the *Residential Tenancy Branch Rules of Procedure*, each respondent must be served with the Notice of Dispute Resolution Proceeding package. Therefore, as I cannot confirm that Tenant D.Q. was served as required, pursuant to Section 64(3)(c) of the *Act*, I remove this Tenant from the application.

### Issues to be Decided

Is the Landlord entitled to monetary compensation?

Is the Landlord entitled to compensation for damages?

Is the Landlord entitled to compensation for unpaid rent?

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

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

### Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were also confirmed by the tenancy agreement submitted into evidence. The tenancy began on August 15, 2018 and the Tenants moved out on January 19, 2019. Monthly rent was \$3,000.00 and a security deposit of \$1,500.00 was paid at the start of the tenancy. The Landlord is still holding the full security deposit amount.

The Landlord is seeking compensation in the amount of \$8,619.11. Although she testified as to further damage she would like to claim, it was clarified that this hearing would only address the claims as noted on the Application for Dispute Resolution up to a total of \$8,619.11. Both parties are at liberty to file a new application should there be any remaining claims regarding this tenancy.

Regarding the move-out inspection, the Landlord stated that she provided several dates to the Tenant to meet for a move-out inspection. She stated that the Tenant made arrangements to come but then would cancel. She submitted a copy of the Condition Inspection Report which was signed by both parties at move-in on August 15, 2018 and by only the Landlord at move-out on January 22, 2019.

The Tenant stated that as they had to move out quickly due to receipt of a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice"), he took important belongings with them and had permission to store the remainder of the items in the garage until able to return and get them. He stated that the weather was poor at the time and due to moving out of town, they were unable to safely travel back to the rental unit.

The parties agreed that the Tenant's forwarding address was not provided to the Landlord until after she had already filed the application, which is why the Landlord applied for a substituted service order to serve the Tenant by email. The parties agreed that the Tenant provided his forwarding address in an email dated February 7, 2019 which was included in evidence.

The monetary claims of the Landlord will be outlined below.

**Cleaning:** The Landlord testified that the Tenants smoked in the rental unit, despite the tenancy agreement clearly stating that there was no smoking on the property. She stated that the smoke smell in the rental unit was overwhelming and due to this she rented an ozonator to try to remove the smell. The Landlord stated that the cost of this rental was \$56.00.

The Landlord submitted an email from a realtor dated January 25, 2019 in which the realtor notes the smoke smell and suggests an ozonator rental as well as professional carpet cleaning. The Landlord also submitted photos of cigarette butts in vacuum cleaners which she stated were the central vacuums in the home, and a copy of a receipt for the rental dated January 25, 2019 in the amount of \$56.00.

The Landlord has also claimed compensation for the purchase of safety goggles to use while operating the ozonator in the amount of \$7.02. The Landlord submitted a copy of the receipt showing the cost of the goggles in the amount of \$7.02.

The Tenant testified that they never smoked inside the home, only outside. He agreed that the vacuum cleaners had cigarette butts in them due to vacuuming the patio outside.

The Landlord is also seeking carpet cleaning in the amount of \$283.50 and cleaning of the rental unit for an amount of \$120.00. The Tenant did not dispute these claims and agreed that he would pay for the cleaning and carpet cleaning for a total of \$403.50.

**Miscellaneous:** The Landlord has applied for compensation for a replacement garage door remote, as well as gloves and a mask for use of the ozonator in the amount of \$66.11.

The Landlord is also claiming compensation for the purchase of vinegar and lightbulbs in the amount of \$19.23 and a new light fixture, locks and deodorizer in the amount of \$161.05.

The Landlord submitted copies of the receipts for these purchases and also submitted a photo of the broken light fixture. She stated that she purchased the deodorizer prior to renting the ozonator to see if that would resolve the smoke odour issue. She also noted that the Tenant did not return the keys or garage door remote which led to these charges.

The Tenant agreed to pay for the items including the new light fixture, the locks and the deodorizer in the amount of \$161.05. The Tenant also agreed to pay for the gloves and mask. The Tenant did not agree to pay for the garage door remote or the lightbulbs. The Tenant testified that he was storing his belongings in the garage so needed to keep the garage door opener. He stated his intent to return to the rental unit a few days after moving out but was unable to due to the weather conditions. The Tenant confirmed that he still has the garage door remote.

The Tenant also stated that the tenancy was only a few months and therefore he does not believe that the lightbulbs burnt out in that time. He disputed that he should be responsible for the replacement costs of the lightbulbs.

**Door repair:** The Landlord is claiming \$15.67 for the repair of a basement bedroom door that was off of the hinges. The Tenant did not dispute this claim and agreed to pay the Landlord the amount of \$15.67 for the door repair kit.

**Painting:** The Landlord is seeking \$630.00 for the painting of two rooms in the rental unit. She stated that this was required due to damage to the walls, as well as to help cover up the smoke odour. The Landlord submitted an invoice for the painting dated January 26, 2019 in the amount of \$630.00. The Condition Inspection Report at move-out notes a smoke odour throughout the rental unit but does not note damage to the walls.

The Tenant stated that there was no damage to the walls. He also stated his position that the Landlord wanted to paint due to trying to sell the home. He noted that he was present at the move-in inspection and did not mention small scratches or other marks on the wall, instead noting that the condition of the unit was good at move-in. The Tenant also questioned painting to cover up an odour.

**Utilities:** The Landlord is seeking unpaid utilities for the period of October 6 to December 5, 2018 in the amount of \$138.26 and for the period of December 6, 2018 to January 19, 2019 in the amount of \$83.23. The Tenant did not dispute these claims and agreed that he will pay the utility bills in the total amount of \$221.49.

**Unpaid rent:** The Landlord is seeking unpaid rent for January and February 2019 for a total of \$6,000.00. She stated that the Tenants did not pay rent for January 2019 which led to service of a 10 Day Notice. The Landlord submitted a copy of this notice dated January 9, 2019 to end the tenancy on January 19, 2019. She stated that due to the non-payment of rent, the Tenants broke the fixed term tenancy.

The Landlord stated that she is seeking unpaid rent for February 2019 due to not being able to re-rent the unit right away while completing repairs and due to the items left behind in the garage. She stated that the Tenants cancelled 7 meetings that were arranged to meet and collect the belongings. The Landlord submitted into evidence email communication with the Tenant in which they discuss the Tenant collecting his belonging.

In an email dated February 15, 2019 the Tenant asked where the belongings are stored as he had plans to pick them up the following week. The Landlord submitted many other emails in which the parties discuss the Tenants collecting the remainder of their belongings, including emails from January 30 and January 31, 2019 in which the Tenant cancelled plans to attend the rental unit and collect the items out of the garage.

The Landlord stated that the final repairs were complete, and the Tenants' belongings dealt with by February 23, 2019. The Landlord stated that the home was listed for sale after the Tenants moved out.

The Tenant was in agreement that they did not pay January 2019 rent and were unable to pay it within the 5 days to cancel the 10 Day Notice, which is why they moved out on January 19, 2019. He stated that he tried to meet to pay after January 19, 2019 but was unable to coordinate. The Tenant stated his position that they do not owe rent for February 2019 as the Landlord evicted him.

**Liquidated damages:** The Landlord is seeking \$1,000.00 which she stated is liquidated damages due to providing the Tenants with a discount for signing a fixed-term tenancy agreement. She stated that rent was to be \$3,200.00 but as the Tenants agreed to a fixed term of two years, she offered the rental unit to them at an amount of \$3,000.00 per month. As the Tenants broke the fixed term and were evicted through a 10 Day Notice, the Landlord stated that she is seeking the amount of \$200.00 per month for the 5 month duration of the tenancy for a total of \$1,000.00.

The tenancy agreement addendum notes that the rent is being reduced by \$200.00 per month and also states that the Landlord may retain the security deposit if the fixed term tenancy agreement is broken.

The Tenant was not in agreement that they owed this amount.

### Analysis

Based on the testimony of both parties and the evidence of the Landlord, I find as follows regarding each of the Landlord's claims:

**Cleaning:** I accept the testimony of the Tenant that he agreed to pay for the carpet cleaning in the amount of \$283.50 and cleaning of the rental unit in the amount of \$120.00 and award these amounts to the Landlord.

Regarding the rental of the ozonator and associated costs, I find the photos of the vacuum cleaner canisters to indicate that the Tenants were likely smoking in the home which caused some odour in the unit. Although the Tenant stated that they were vacuuming up cigarette butts from the patio, I find it likely that there was also some smoking in the home as it is more likely that the vacuums were used inside than out and also due to the number of cigarettes present.

I also note that the Condition Inspection Report at move-out indicates the smell throughout the rental unit and that the email from the Landlord's realtor also indicates that there was a smell present. On a balance of probabilities, I find that there was likely an odour of smoke in the rental unit.

As such, I find it reasonable that the Landlord would attempt to resolve the issue minimally first through the rental of the ozonator. I also note that I find the costs claimed to be reasonable and as satisfied as to the amounts claimed due to the receipts submitted into evidence. Therefore, I award the Landlord \$56.00 for the rental of the machine, as well as \$7.02 for the purchase of the safety goggles for a total of \$63.02.

**Miscellaneous:** The Tenant agreed to pay for the miscellaneous items as claimed by the Landlord with the exception of the garage door remote and the lightbulbs.

However, I accept the testimony of the Tenant that he did not return the garage door remote. Therefore, I find it reasonable that the Landlord would need to purchase a new one. As stated in Section 37 of the *Act*, a tenant must return all the keys at the end of the tenancy. As the Tenant did not do so, I find that he breached the *Act* and must compensate the Landlord for the resulting loss.

Regarding the lightbulbs, I find that the Tenant is responsible for these costs as well. As stated in *Residential Tenancy Policy Guideline 1*, a tenant is responsible for replacing burnt out lightbulbs during the tenancy. In the absence of any evidence that would confirm that the lightbulbs were still in working condition at the end of the tenancy, I accept the testimony of the Landlord that they were not and find that the Tenant is responsible for these costs.

Therefore, I award the amounts claimed as noted on the receipts provided by the Landlord which is \$161.05 as agreed upon by the Tenant, \$19.23 for lightbulbs and cleaning supplies and \$66.11 which includes the amount agreed upon by the Tenant as

well as the replacement garage door remote. The total compensation awarded to the Landlord is \$246.39.

**Door repair:** I accept the testimony of the Tenant and find that he agreed to pay the Landlord \$15.67 for the repair of a basement bedroom door. Therefore, I award the Landlord the amount of \$15.67.

**Painting:** The Landlord stated that they painted due to damage to the walls as well as to mask the smoke odour that was present in the rental unit. However, I fail to find sufficient evidence that painting was required and that the Tenant should be responsible for the cost of painting in the amount of \$630.00.

I do not find sufficient evidence before me that the painting was done to mask the odour and also fail to find sufficient evidence of damage to the walls. As stated, the Condition Inspection Report at move-out notes the presence of a smoke odour but does not make note of any damage to the walls.

As such, I am not satisfied that the Landlord has met the burden of proof to establish that the walls were painted due to a breach by the Tenants. I decline to award any compensation for painting.

**Utilities:** As the Tenant did not dispute that he owes the Landlord for the two utility bills in question and agreed to pay the Landlord, I award the Landlord a total of \$221.49 for the utility bill from the period of October 6 to December 5, 2018 and for the utility bill for the period of December 6, 2018 to January 19, 2019.

**Unpaid rent:** As stated in Section 36 of the *Act*, a tenant must pay rent when it is due as per the tenancy agreement. I find that the tenancy agreement establishes that monthly rent was \$3,000.00 due on the first day of each month. I also accept the 10 Day Notice submitted into evidence that establishes that the Tenant did not pay rent for January 2019, which was not denied by the Tenant. Therefore, I award the Landlord \$3,000.00 for rent for January 2019.

Regarding the claim for February 2019 rent, I also find that the Tenant is responsible for rent in the amount of \$3,000.00. Upon review of the email communication submitted into evidence, I find it clear that the Tenant did not pick up the belongings in the garage. I note that some of the emails were dated well into February 2019 when the Tenant was still making arrangements to get the belongings. Regardless of whether the Landlord was intending to re-rent the unit or sell, I also find it reasonable that she needed time to



clean the carpets, clean the rental unit and complete other cleaning or repairs that may have been required.

I also note that as the Tenant was in a fixed-term tenancy, they breached the agreement by not paying rent and thus ending the tenancy before the end of the fixed term. As stated in *Residential Tenancy Policy Guideline 3*, if a tenant breaches the agreement they may be responsible for compensating the landlord for any loss of rent up to the time when the tenancy may have legally ended.

As the Tenant did not pay rent for January 2019, I find they breached the tenancy agreement and did not fully move out on January 19, 2019 due to leaving belongings behind. While a Landlord has a duty to minimize their losses, I find that the Landlord took reasonable steps to do so by attempting to accommodate the Tenant in picking up the items left behind and providing time to do so. Therefore, as the Tenants had not fully moved out as of February 1, 2019 when rent would have been due, I find that the Tenants are responsible for February 2019 rent in the amount of \$3,000.00.

**Liquidated damages:** Regarding the liquidated damages claim, the Landlord stated that this was compensation for the discount in rent provided to the Tenants for signing a 2-year fixed term agreement. However, I do not find this to be a liquidated damages fee.

As stated in *Residential Tenancy Policy Guideline 4*, a liquidated damages fee is one which is agreed upon by both parties at the start of the tenancy and is an estimate of the loss, not a penalty. However, upon review of the tenancy agreement, I do not find that the agreement or the addendum mention a liquidated damages clause and therefore do not find that the parties entered into an agreement to pay a liquidated damages fee at the start of the tenancy. Instead, I find that the tenancy agreement addendum notes that the Landlord may retain the security deposit if the fixed term is broken, which I do not find to be enforceable, as it contradicts Section 20(e) of the Act.

However, I decline to award the amount of \$1,000.00 to the Landlord, regardless of whether it is a liquidated damages fee or not. Although the Landlord may have decided to reduce the rent, I find that the parties agreed that the rent would be \$3,000.00 per month during the tenancy and did not agree that the Tenant would pay an additional \$200.00 per month should the tenancy end. I decline to award compensation to the Landlord for this amount claimed.

Regarding the security deposit, I refer to Section 38(1) of the *Act* which states that within 15 days of the later of the date the tenancy ends or the date the forwarding address was provided in writing, the landlord must return the deposit or file a claim against it. The tenancy ended on January 19, 2019 and the Landlord filed the application on January 30, 2019. As the Landlord did not receive the Tenant's

forwarding address until approximately February 7, 2019, I find that she applied on time, as she applied prior to receipt of the forwarding address.

Therefore, I find that the Landlord does not owe the Tenant double the deposit pursuant to Section 38(6) of the *Act* and instead is authorized to retain the deposit towards compensation owed.

As the Landlord was mostly successful with the application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee paid for the application in the amount of \$100.00.

The Landlord is awarded a Monetary Order in the amount outlined below.

Carpet cleaning	\$283.50
Ozonator rental and goggles	\$63.02
Cleaning of rental unit	\$120.00
Door repair	\$15.67
January 2019 rent	\$3,000.00
February 2019 rent	\$3,000.00
Utility bills	\$221.49
Lightbulbs, garage door remote, new keys, gloves, mask etc.	\$246.39
Filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$1,500.00)</i>
<b>Total owing to Landlord</b>	<b>\$5,550.07</b>

### Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$5,550.07** as outlined above. The Landlord is 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: July 25, 2019

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Residential Tenancy Branch