



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CHATEAU GARDENS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      FFL MNDL-S MNRL-S

### Introduction

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

- a Monetary Order for unpaid rent and for compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*;
- authorization to retain the tenant's security deposit in partial satisfaction of this claim pursuant to sections 38 and 67 of the *Act*; and
- recovery of the filing fee for this application from the tenants pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's agents B.T. and W.H. (herein referred to as "the landlord") attended on behalf of the corporate landlord. The tenant attended with two advocates.

As both parties were present, service of documents was confirmed. The tenant confirmed receipt of the landlord's Notice of Dispute Resolution Proceeding package and evidence. The landlord confirmed receipt of the tenant's evidence. Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with sections 88 and 89 of the *Act*.

### Preliminary Issue – Amendment of Landlord's Application

The parties confirmed the rental unit number to be added to the dispute address on the landlord's Application for Dispute Resolution. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's Application to provide the correct the dispute address.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the monetary claim?  
Is the landlord entitled to recover the cost of the filing fee for this application from the tenants?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence. The parties confirmed the following details pertaining to this tenancy:

- This fixed-term tenancy began on August 1, 2018 with a scheduled end date of July 31, 2019.
- Monthly rent of \$795.00 and parking of \$15.00 was payable on the first of the month.
- At the beginning of the tenancy, the tenant paid a security deposit of \$397.50 and a pet damage deposit of \$397.50, which the landlord continues to hold.
- As a result of a prior arbitration hearing (file number noted on cover sheet of this decision) held on May 9, 2019, the landlord obtained an Order of Possession which was served on the tenant. The tenant applied for a review consideration of the decision, and the original decision was upheld. The landlord proceeded with the Order of Possession and provided the tenant with a move-out date and time of May 23, 2019 at 1:00 p.m. However, the tenant failed to move out all of her belongings by this time, and the landlord granted an extension until the following morning on May 24, 2019. When the tenant still had not completed her move-out by 10:45 am on May 24, 2019, the landlord deactivated the tenant's access FOB. The landlord subsequently allowed the tenant access to the rental unit to collect her cat and her purse, and by 4:00 p.m., the landlord moved the tenant's belongings that had been left in the stairwell, to storage. The tenant also left behind some belongings in the rental unit that she did not have an opportunity to dispose of, which were disposed of by the landlord.
- A condition inspection of the rental unit was completed by the landlord and the tenant at the beginning of the tenancy, and a written report provided to the tenant.
- The landlord did not conduct a move-out inspection with the tenant at the end of the tenancy – only the landlord's agents completed the move-out condition inspection report. The landlord did not serve the tenant with a Notice of Final Opportunity to Schedule a Condition Inspection (#RTB-22) to provide the tenant with a second and final opportunity to participate in a condition inspection.

The landlord claimed costs for compensation related to unpaid rent and parking for the month of May 2019 of \$810.00; \$10 for rent late fee for March 2019; \$860.00 cleaning costs; \$500.00 painting costs; \$100.00 garbage disposal costs; \$80.00 storage costs; and \$50.00 curtain cleaning costs.

The tenant confirmed that she had not paid rent or parking for May 2019. The tenant disputed that she was responsible for the late fee for March 2019 of \$10.00 as she testified it was a result of the landlord's error in processing her rent payment. The landlord submitted a rent ledger into evidence. The rent ledger indicated rent payments for March allocated to both February (on the 15<sup>th</sup>) and March (on the 5<sup>th</sup>), failing to provide clarity on how rent was processed for March 2019.

In support of their claim, the landlord submitted into evidence a copy of the condition inspection report and 14 photographs showing: damage to walls such as a hole, and paint and dirt on the walls; garbage, food and personal items left behind in the rental unit; floor damage and dirt; uncleaned toilet and tub; damage to cupboard under the sink; and damage to doors. The landlord submitted a move out statement itemizing the costs claimed.

### Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to section 7(2) of the *Act*.

In this case, the landlord has claimed for compensation for unpaid rent and late fee, cleaning and painting, garbage removal and storage costs. I have addressed my findings on each of these heads of claim separately, based on the testimony and evidence presented, on a balance of probabilities, as follows:

#### 1) Unpaid Rent & Late Fee

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

I accept the landlord's claim that the agreed upon terms of the tenancy required the tenant to pay \$795.00 in monthly rent and \$15.00 for monthly parking. As such, based on the testimony and evidence before me, on a balance of probabilities, I find that the tenant did not vacate the rental unit until May 24, 2019 and is responsible for rent and parking costs for the month of May 2019.

Therefore, I find the landlord is entitled to a monetary award of \$810.00 for unpaid rent and parking owed by the tenant for May 2019.

I decline the landlord's claim for the \$10.00 late fee as I find the landlord has failed to submit sufficient evidence that there was not an error on the landlord's part that contributed to the late payment of rent, resulting in the late fee.

## 2) Cleaning and Painting

Section 37(2) of the *Act* sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

- 37(2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,...

Based on the testimony and evidence submitted by the landlord in support of their claim, which included a move in condition inspection report signed by the tenant, and photographic evidence of the condition of the rental unit at move out, I find that there is sufficient evidence that the tenant caused damage beyond reasonable wear and tear failed to leave the rental unit reasonably clean. Further, given the extent of the cleaning required, I do not find that the tenant would have been able to complete the cleaning needed to bring the rental unit to the standard of reasonably clean had she been provided until the end of the day or even an additional day. Therefore, I find that the claimant has shown that the loss claimed for cleaning costs stemmed directly from a contravention of the *Act* by the other party. However, I find the amount of the loss claimed, \$860.00, to be excessive given the size of the rental unit and the landlord's testimony that it took 3 staff, 3 days to complete the cleaning. As such, I am awarding the landlord a nominal award of \$560.00 which represents 2 days of work (7 hours per day), by 2 staff at a rate of \$20.00 per hour.

I decline the landlord's claim of \$50.00 for cleaning the curtains, given the landlord's testimony that the curtains were replaced, not cleaned.

In determining damages related to repair and replacement costs for building elements, such as painting, my assessments are determined in accordance with Residential Tenancy Policy Guideline 40. Useful Life of Building Elements. This Guideline notes:

*Useful life is the expected lifetime, or acceptable period of use, of an item under normal circumstances...if the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.*

As the landlord testified that the rental unit was last painted prior to the tenant moving in, which was ten months prior, I have allocated 80% as the percentage of replacement cost for painting

attributable to the tenant, based on Policy Guideline 40, which provides that paint has a useful life of four years.

Therefore, I find that the landlord is entitled to a monetary claim for painting of \$400.00.

3) Garbage removal and storage costs

Section 57 of the Act sets out what happens if a tenant does not leave when the tenancy has ended, and the remedies available to the landlord, as follows:

57 (1) In this section:

"new tenant" means a tenant who has entered into a tenancy agreement in respect of a rental unit but who is prevented from occupying the rental unit by an overholding tenant;

"overholding tenant" means a tenant who continues to occupy a rental unit after the tenant's tenancy is ended.

- (2) The landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.
- (3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.
- (4) If a landlord is entitled to claim compensation from an overholding tenant under subsection (3) and a new tenant brings proceedings against the landlord to enforce his or her right to possess or occupy the rental unit that is occupied by the overholding tenant, the landlord may apply to add the overholding tenant as a party to the proceedings.

In this case, I find that the landlord did not follow the available remedies under section 57 of the *Act*. Had they done so, they would have obtained a writ of possession which would have allowed them to secure the services of a bailiff to address the issue of removal and storage of the tenant's belongings. The landlord would then have been able to claim the costs incurred for these services. As such, I decline the landlord's claim for these losses.

**Summary of Monetary Award and Set-off Against Security Deposit**

In summary, I find that the landlord has established entitlement to a monetary award of \$1,770.00.

Further to this, as the landlord was successful in obtaining a monetary award through this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

The landlord continues to retain the tenant's security and pet damage deposits totalling \$795.00. The landlord confirmed receipt of the tenant's forwarding address in writing by June 9, 2019, as required by section 38(1)(b) of the *Act* to trigger the return of the deposits. The landlord filed their application for dispute to claim against the deposits on June 17, 2019, which is within the 15-day time limit provided under the *Act*.

I find insufficient evidence that the landlord offered the tenant at least two opportunities for inspection as required by section 36 of the *Act*, using the required Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity. However, the landlord's claim pertains to unpaid rent in addition to a claim for damages, therefore, although I find the landlord extinguished their ability to claim against the deposits for damage, the landlord remained entitled to claim against the deposits for unpaid rent and parking, which exceeded the amount of the deposits.

Therefore, in accordance with the offsetting provisions of section 72 of the *Act*, I set-off the total amount of compensation owed by the tenant to the landlord of \$1,770.00, against the tenant's security deposit of \$795.00 held by the landlord, in partial satisfaction of the total monetary award in favour of the landlord.

As such, I order the landlord to retain the tenant's security and pet damage deposits totalling \$795.00 and I issue a Monetary Order in the landlord's favour for the remaining amount of the monetary award owing in the amount of \$1,075.00, explained as follows:

Item	Amount
Monetary award in favour of landlord	\$1,770.00
Recovery of the filing fee from the tenants	\$100.00
LESS: Security deposit held by landlord	(\$795.00)
<b>Total Monetary Order in Favour of Landlords</b>	<b>\$1,075.00</b>

### Conclusion

I order the landlord to retain the security and pet damage deposits for this tenancy in partial satisfaction of the monetary award granted to the landlord for compensation.

I issue a Monetary Order in the landlord's favour against the tenant in the amount of \$1,075.00 in satisfaction of the remaining amount of loss owed, and to recover the landlord's filing fee for this application.

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: October 23, 2019

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Residential Tenancy Branch