



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S, MNDL-S, MNRL, FFL  
MNDCT, MNSD, FFT

### Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Residential Tenancy Act* (the “Act”). The Landlord applied for monetary compensation, compensation for damages, compensation for unpaid rent, and to retain the security deposit and/or pet damage deposit towards compensation owed. The Tenant applied for monetary compensation, and for the return of the security deposit and/or pet damage deposit. Both parties also applied for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord and a family member (the “Landlord”) were present for the hearing as was the Tenant. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package regarding the Landlord’s application and a copy of the Landlord’s evidence.

The Landlord stated that they did not receive the Notice of Dispute Resolution Proceeding package regarding the Tenant’s application or a copy of the Tenant’s evidence. However, the Tenant stated that she sent the documents to the Landlord by registered mail and provided the registered mail tracking number which is also included on the front page of this decision. Entering the tracking number on the Canada Post website confirms that the package was delivered on July 26, 2019 and signed for by the Landlord.

As such, I find that the Landlord was served with the notice of hearing documents and the Tenant’s evidence on July 26, 2019. However, I accept the Tenant’s testimony that she served all of her evidence except for three documents that she submitted to the Residential Tenancy Branch two weeks prior to the hearing. This includes a document

regarding the tenancy history, a response to the Condition Inspection Report submitted by the Landlord and information on the Landlord's online advertisement for the rental unit. As such, as these three documents were not served to the Landlord they are not accepted and will not be considered in this decision.

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.

### Issues to be Decided

Is the Landlord entitled to compensation and/or compensation for damages?

Is the Landlord entitled to compensation for unpaid rent?

Should the Landlord be authorized to retain the security deposit and/or pet damage deposit towards compensation owed?

Is the Tenant entitled to monetary compensation?

Should either party 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. The tenancy started in January 2017 and ended on June 30, 2019. A tenancy agreement was submitted into evidence with a start date of October 1, 2018. The parties stated that this was a new agreement entered into following the initial tenancy agreement. This tenancy agreement set the monthly rent at \$3,700.00, due on the first day of each month. The Tenant paid a security deposit and a pet damage deposit of \$1,775.00 each at the start of the tenancy. The Landlord confirmed that they are still holding both deposits.

The Landlord is seeking compensation in the amount of \$9,622.61. Included in this amount is a claim for \$5,000.00 for damages which the Landlord stated is the estimated cost of repairs to the floor as well as fixing and painting the walls. They stated that they have not yet completed the work but received a few estimates and chose the lowest one. They stated that the estimate is \$3,000.00 for repair and painting of the walls and

\$2,000.00 for the repair of the flooring. The Landlord referenced photos submitted in their evidence of the walls and floor which they stated show the damage caused by the Tenant during the tenancy.

The Landlord also submitted a move-out Condition Inspection Report which they stated was completed on June 30, 2019. The report was unsigned by the Tenant and the Landlord stated that the Tenant had refused to sign the report at the time and despite requests to sign following the end of the tenancy. The Landlord stated that no written inspection report was completed at the start of the tenancy.

The Tenant testified that the rental unit was left clean and undamaged other than reasonable wear and tear. She stated that at the move-out inspection on June 30, 2019 the Landlord did not have a form and that she was not asked to sign anything. The Tenant stated that the wear and tear on the home included small nail holes that she had filled and sanded, and that the Landlord could have painted very quickly. She stated that there were no other issues with the rental unit when returned at the end of the tenancy and that any damage was present at the start of the tenancy or was due to wear and tear.

The parties confirmed that the Tenant did not agree in writing to any deductions from the security deposit. The Tenant stated that her forwarding address was provided in writing when she gave notice to end the tenancy on May 30, 2019. A copy of this letter was submitted into evidence. The Landlord was unsure of the date that the forwarding address was received but confirmed that it was provided prior to the end of the tenancy.

The Landlord is also seeking \$3,700.00 for rent for July 2019. They stated that due to the repairs required in the home they were unable to re-rent the unit until August 10, 2019. The Landlord stated that they believe they began advertising the rental unit online in June 2019 and noted that they had a lot of interest. However, they stated that potential tenants were not interested as the repairs to the wall and flooring were needed but not completed.

The Landlord was unsure as to the exact monthly rent the unit was advertised for as they reduced the price to try to obtain a new tenant. However, they stated that they advertised initially for \$4,800.00 and reduced to approximately \$4,500.00 at some point, possibly reducing more. The Landlord noted that the monthly rent did not seem to be an issue for potential tenants and instead it was the condition of the rental unit that was deterring people.

The Tenant stated her position that the unit could have been rented but the Landlord advertised the unit online for \$4,800.00. She also stated that any damage was pre-existing and therefore not her responsibility. The Tenant disputed that she should pay July 2019 rent as the Landlord likely did not rent the unit due to increasing the rent by \$1,100.00.

Lastly, the Landlord has claimed \$922.61 for utilities which they stated were water bills from the city. They noted that the tenancy agreement indicates that water is not included in the rent and stated that the Tenant had verbally agreed to pay the bills, but only if they reimbursed her for the cost of repairing the oven.

The Landlord submitted a copy of the utility bills from the city dated December 31, 2018 in the amount of \$471.09 and March 31, 2019 in the amount of \$451.52. Both bills indicate that they are for water, sewer, garbage/organics, and recycling.

The Tenant was in agreement that water was not included in the rent and therefore she agrees that the water charges are her responsibility. She stated her understanding that the water portion for each bill was approximately \$74.10 and \$76.12. However, she stated that she is not responsible for the remainder of the charges on the utility bills.

Regarding the Tenant's application, she applied for compensation in the amount of \$503.52 for the cost of repairing the gas oven, and for the return of the security deposit.

The Tenant testified that she came home one day in March 2019 and the knob of the gas oven was on the floor. She stated that she tried to find one but was advised that she would need a gas fitter as it was an issue with the thermostat. The Tenant stated that she had the work completed by a professional for a cost of \$503.52. She submitted into evidence an invoice dated May 12, 2019 from an appliance company in the amount claimed.

The Tenant stated that she did not notify the Landlord as to the issue with the gas oven as she had thought it was minor and that she would be able to fix it easily. She stated that the Landlord had provided verbal notice that she would be reimbursed.

The Landlord testified that they never agreed to pay for the repairs and that they had no idea about the oven repairs until afterwards when the Tenant sent them multiple emails seeking reimbursement.

## Analysis

For each of the Landlord's claims, I find as follows:

Damages: The Landlord has claimed \$5,000.00 for damages. Section 7 of the *Act* states that if a party does not comply with the *Act*, they must compensate the other party for any losses that occur as a result. Section 37 of the *Act* requires that a tenant leaves a rental unit reasonably clean and undamaged at the end of the tenancy.

However, while the Landlord claimed that the Tenant left the rental unit damaged at the end of the tenancy, I am not satisfied that the Landlord has met the burden of proof to establish that any damage was caused by the Tenant. As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. Therefore, the Landlord has the onus to establish their claim.

While the Landlord submitted a Condition Inspection Report that they stated was completed at move-out, it was not signed by the Tenant and the Tenant was not in agreement as to what occurred at move-out. However, regardless of this, as the parties agreed that no move-in inspection was completed, I find that the Landlord has not established the condition of the rental unit at the start of the tenancy. As stated in Section 23 of the *Act*, the rental unit must be inspected at the start of the tenancy and must be in writing as per the regulations.

In the absence of the required move-in inspection, I do not find that the Landlord has established the condition of the rental unit at the start of the tenancy and therefore I am not satisfied that any damage in the rental unit at the end of the tenancy was not already there, as testified to by the Tenant.

I also note that a party claiming a loss must establish the value of their loss, as outlined in *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* through a four-part test as follows:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and

- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In the absence of sufficient evidence to establish the amount spent on repairs, such as invoices and receipts, I am also not satisfied as to the amount claimed by the Landlord for damages. As such, I decline to award any compensation for repairs. This claim is dismissed, without leave to reapply.

Utilities: The Landlord claimed \$922.61 for utility bills and submitted two bills that show charges for water, sewer, garbage/organics and recycling. While Tenant testified that only water was not included in the rent, upon review of the tenancy agreement I find that water, sewer, garbage and recycling were also not included and the only services/utilities that were noted as included were laundry, refrigerator, dishwasher, and stove/oven.

Therefore, I accept that the Tenant is responsible for the two utility bills from the city which were issued during the tenancy and award the Landlord an amount of \$922.61 as claimed.

Unpaid rent: Regarding the Landlord's claim for unpaid rent in the amount of \$3,700.00, I do not find that the Tenant is responsible for this amount. As stated in the four-part test outlined above, a party claiming a loss must take reasonable steps to mitigate their losses and must also establish that the other party breached the *Act, Regulation* and/or tenancy agreement.

The Landlord stated that they were unable to re-rent the unit due to the damage caused by the Tenant. However, as stated, I do not find that the Landlord has met the burden of proof to establish that the rental unit was damaged by the Tenant. The Landlord also testified that they initially advertised the rental unit for \$4,800.00 and I do not find a rent increase of \$1,100.00 per month to be reasonable in attempting to mitigate potential losses. Therefore, I am not satisfied that the Landlord was unable to rent due to damage in the rental unit and not due to the monthly rent amount. This claim is dismissed, without leave to reapply.

Regarding the Tenant's claims, I find as follows:

Oven repair: The Tenant claimed \$503.52 for repair of the gas oven. I refer to Section 32 of the *Act* which states that a landlord must maintain and repair the rental unit.

However, based on the testimony of both parties, I find that the Landlord was not aware of the issue with the gas oven and was therefore not provided an opportunity to repair.

As such, I find that it is not clear whether there were other ways to repair the issue or whether the Landlord could have completed the repairs for less than the Tenant paid. I do not find that the Tenant had authorization to complete the repairs on her own and then charge the Landlord for the cost as I do not find that this was an emergency repair pursuant to Section 33 of the *Act*. Therefore, I decline to award any compensation for the oven repair to the Tenant. This claim is dismissed, without leave to reapply.

Security deposit and pet damage deposit: I refer to Section 38(1) of the *Act* which states that a landlord has 15 days from the later of the date the tenancy ends or the date the forwarding address is provided in writing to return the deposits or file a claim against them.

The parties agreed that the tenancy ended on June 30, 2019. Although the Landlord was unsure as to the date the Tenant's forwarding address was provided, from the evidence before me I accept that it was provided in writing on or around May 30, 2019. Therefore, the Landlord had 15 days from June 30, 2019 to return the deposits or file a claim against them. As the Landlord filed the Application for Dispute Resolution on July 11, 2019, I find that the application was filed within the time allowable under the *Act* and therefore was in compliance with Section 38(1).

Therefore, the Landlord does not owe the Tenant double the deposits and instead, the amount found to be owing to the Landlord may be retained from the deposits, with the remainder returned to the Tenant.

Both parties claimed for the recovery of the filing fee paid for their applications. However, as both parties were partially successful with their applications, instead of awarding the filing fee to each party, I find that there is no need as the amounts paid cancel each other out. Therefore, I decline to award either party the recovery of this fee.

The Tenant is awarded a Monetary Order in the amount outlined below:

Return of security deposit	\$1,775.00
Return of pet damage deposit	\$1,775.00
<i>Less utilities</i>	<i>(\$922.61)</i>
<b>Total owing to Tenant</b>	<b>\$2,627.39</b>

Conclusion

Pursuant to Sections 38 and 67 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$2,627.39** for the return of the security deposit and pet damage deposit after deductions as outlined above. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord 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 29, 2019

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Residential Tenancy Branch