



# Dispute Resolution Services

Page: 1

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 retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$8,169.89 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The landlord attended the hearing and was represented by an agent ("**AM**"). Tenant JP attended the hearing. Tenant TC was represented by an agent ("**KC**"), who was also a resident of the rental unit. The agents made the bulk of the parties' submissions. Each were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

AM testified, and KC confirmed, that the landlord served the tenants with the notice of dispute resolution form and supporting evidence package. KC testified, and AM confirmed, that the tenants served the landlord with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

### Issue(s) to be Decided

Is the landlord entitled to:

- 1) a monetary order in the amount of \$8,169.89;
- 2) recover his filing fee; and
- 3) apply the security deposit against any monetary order awarded at this hearing?

## **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting September 1, 2018. The rental unit is the upper suite in a two-suite residential property. The basement suite is a separate rental unit. Monthly rent was \$1,400 and was payable on the first of each month. The tenants paid the landlord a security deposit of \$700 and a pet damage deposit of \$350. The tenants agreed in writing that the landlord could keep both deposits at the time the move-out condition inspection report was made.

The landlord alleges that the tenants caused significant damage to rental unit during the tenancy by allowing their cats to urinate throughout the rental unit. AM testified that this damage caused the landlord to issue a one month notice to end tenancy in June 2019, with an effective date of July 31, 2019.

KC testified that the tenants vacated the rental unit on July 1, 2019, without providing any notice to the landlord of their intention to do so. She testified that the tenants did not pay any rent in July 2019. The tenants did not dispute this.

The landlord submitted a monetary order worksheet setting out their claim as follows:

Replace Flooring	
Trim	\$135.88
Laminate Flooring material	\$1,037.61
Transition for laminate	\$73.92
Miscellaneous Install supplies	\$159.15
Replace Bedroom Carpet	\$1,811.95
Cleaning Rental Unit	
Duct cleaning (50%)	\$254.07
Cleaning unit	\$847.31
Loss of Rent	
Lost rent for Basement Unit	\$1,050.00
Lost rent for July 2019	\$1,400.00
Lost rent for August 2019	\$1,400.00
<b>Total</b>	<b>\$8,169.89</b>

During the hearing AM withdrew the landlord's claim for compensation relating to the loss of rent of the basement suite.

The tenants disputed neither the allegation that they caused damage to the rental unit nor the costs incurred by the landlord to repair the damage, except for the costs associated with the cleaning of the storage shed. The landlord testified that the amount costs associated with cleaning the shed were approximately \$20 and amounted to the removal of some garbage.

AM testified that the landlord had the rental unit cleaned and the carpet replaced in July 2019 in an effort to eliminate the persistent, strong smell of cat urine throughout the unit. She testified that these steps were insufficient to eliminate the smell, as the urine had apparently soaked through various surfaces throughout the rental unit and permeated the subflooring. She testified that by the end of July 2019 it became apparent that further repairs would be necessary to eliminate the smell of cat urine from the rental unit.

AM testified that in late July and early August 2019, the landlord brought in contractors to provide opinions and quotes for how to eliminate the smell completely. She testified that the suggestions ranged from replacing the laminate flooring to stripping the entire unit down to studs. She testified that the quote to replace the laminate floor was prohibitively expensive and included a charge for \$2,000 just to remove the existing flooring.

AM testified that, in an effort to minimize costs, the landlord decided to replace the laminate flooring himself. She testified that the landlord undertook this work in mid-September 2019. She testified that the landlord is claiming compensation for materials only, and nothing for his time or travel expenses associated with the flooring's replacement. She testified that the landlord is not claiming for loss of rent in September 2019, as she acknowledges that the repairs were undertaken in this month to accommodate the landlord's schedule, and that this might have been completed in August, had the landlord retained a third party to replace the laminate floors.

AM testified that smell was mostly eliminated after the laminate flooring was replaced, and the rental unit was in a suitable condition to rent.

#### Tenants' Position

Aside from the cleaning fees associated with the shed, the tenants did not dispute the landlord's claim as it relates to cleaning. KC's submissions pertained to the landlord's claim for loss of July and August 2019 rent.

KC testified that the tenants vacated the rental unit without notice to the landlords due to the lack of hot water in the rental unit following the gas being turned off on June 17, 2019. She testified that, while the gas was turned back on that same day, the hot water tank was not able to be turned back on for 10 days due to it being located in the locked (vacant) basement suite. She testified that she had a disability that gave rise to concern from her doctor and social worker about the lack of hot water. She testified that the tenants vacated the rental unit without notice due to these concerns. She did not provide any documentary evidence from these individuals articulating the concern.

KC testified that the tenants texted the landlord about the lack of hot water multiple times, but that she received no response. The landlord and his agent deny having received these text messages. The tenants did not enter these text messages into evidence.

KC argues that the tenants should not be obligated to pay rent for July 2019, because they did not reside in the rental unit for that month.

KC argues that the tenants should not be required to pay August 2019 rent, as the landlord could have replaced the laminate flooring in July 2019 and re-rented the rental unit in August 2019.

## **Analysis**

### **1. Cleaning and Repair Costs**

As the tenants have not disputed the existence of damages related to repair of the rental unit or the amount of damages claimed (excluding those related to the cleaning of the storage shed), I find that the tenants must pay the landlord the amount claimed by the landlord to repair this damage.

AM did not dispute KC's assertion that the mess left in the storage shed was present at the start of the tenancy. As such, I find that the tenants left the storage shed in the condition that they received it. The tenants did not dispute AM's testimony that the cost associated with cleaning the storage shed was \$20. As such, I accept AM's

uncontroverted evidence on this point. I find that the landlord is not entitled to recover from the tenants the costs associated with cleaning the storage shed (\$20).

## 2. Loss of July 2019 Rent

I find that the one month notice to end tenancy functioned to end the tenancy on July 31, 2019.

Section 26 of the Act states:

### **Rules about payment and non-payment of rent**

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

As such, I find that the tenants were obligated to pay monthly rent in July 2019, even if they had no hot water. The Act does not permit the tenants from withholding rent from a landlord in the event the landlord breached the Act.

Section 45(3) permits a tenant to end a tenancy without 30 days notice in the event of the landlord breaching a material term of the tenancy agreement. However, if a tenant intends to rely on this section, they are required to provide written notice of their intention to the landlord (among other things). In this case, the tenants did not provide any notice (written or otherwise), and section 45(3) does not apply.

As such, I order the tenants to pay the landlord \$1,400, representing the payment of monthly rent for July 2019.

## 3. Loss of August 2019 Rent

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- 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.

Sections 32(2) and (3) of the Act state:

**Landlord and tenant obligations to repair and maintain**

**32(2)** A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

**(3)** A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I find that by causing the damage to the rental unit as alleged by the landlord (which was not denied by the tenants), the tenants breached sections 32(2) and (3) of the Act.

I accept AM's testimony that significant repairs were necessary, and that these repairs occurred in July, August and September 2019. I find that as a result of having to make these repairs, the landlord was unable to rent out the rental unit in August 2019 and suffered a loss of rent for that month in the amount of \$1,400.

The tenants argued that the landlord could have replaced the laminate flooring in July 2019 (when he was making the rest of the repairs) and could have had the rental unit ready to be rented for August 1, 2019. As such, they argued the landlord failed to minimize his losses, and he should not be entitled to recover rent for August 2019 from them.

I agree with the tenants that the landlord *could* have replaced the laminate floors in July 2019 at the same time he was having the other repairs done. However, this is not the appropriate test to determine if the landlord minimized his loss. Rather, the landlord must demonstrate that he acted *reasonably* to minimize his loss.

AM testified that the landlord thought the smell could be removed from the rental unit by having the rental unit cleaned and the carpet replaced. I find that this is a reasonable belief to hold, as a cleaning of the surfaces upon which the tenants cats have urinated

and removing the carpet (a material which soaks up fluids) would seem to be obvious solution to eliminate smells caused by urine. I do not find it unreasonable for the landlord to not have replaced the laminate flooring at the outset of the repairs. It may not have been necessary to do so to eliminate the odour in the rental unit.

I accept that it may only have become apparent to the landlord that the laminate flooring needed to be replaced once the carpets had been replaced, and the landlord discovered that the odour persisted.

As such, I find that the landlord acted reasonably to minimize his loss despite the fact that did not initially replace the laminate flooring.

I order that the tenants pay the landlord \$1,400, representing the loss of August 2019 rent suffered by the landlord as the result of the tenants breach of section 32 of the Act.

#### 4. Deposit

I find that the landlord and tenants agreed in writing that the landlord could retain the security deposit and pet damage deposit. Accordingly, I find that the total amount of damages suffered by the landlord should be reduced by the amount of the security deposit that the landlord retained (\$1,050).

Pursuant to section 72 of the Act, as the landlord has been substantially successful, I find that he is entitled to recover the filing fee from the tenants.

**Conclusion**

Pursuant to sections 67 and 72 of the Act, I order that the tenants pay the landlord \$6,149.89, representing the following:

Replace Flooring	
Trim	\$135.88
Laminate Flooring	\$1,037.61
Transition for laminate	\$73.92
Miscellaneous Install supplies	\$159.15
Replace Bedroom Carpet	\$1,811.95
Cleaning Rental Unit	
Duct cleaning (50%)	\$254.07
Cleaning unit (minus cleaning of the shed)	\$827.31
Loss of Rent	
Lost rent for July 2019	\$1,400.00
Lost rent for August 2019	\$1,400.00
Filing Fee	\$100.00
Credit for security deposit	-\$1,050.00
	\$6,149.89

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 30, 2019

---

Residential Tenancy Branch