



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** FFL MNDCL-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, money owed or compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants confirmed receipt of the landlord's amended application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the tenants were duly served with the landlord's amended application. All parties confirmed receipt of each other's evidentiary materials, and that they were ready to proceed.

It was confirmed at the beginning of the hearing that the tenant KA's surname was spelled incorrectly in the application. As neither party was opposed, KA's name was amended to reflect the proper spelling of her name.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for unpaid rent and losses?

Is the landlord entitled to recover the filing fee for this application from the tenants?

### **Background and Evidence**

This fixed-term tenancy began on December 15, 2018. Monthly rent was set at \$1,900.00, payable on the first of the month. The landlord had collected, and still holds, a security deposit in the amount of \$950.00. The tenants moved out at the end of this fixed term tenancy on May 31, 2019. The named landlord on the tenancy agreement was originally the applicant's property manager. The owner took over the management of the rental unit after the contract ended with the property management company on May 31, 2019.

The landlord is requesting monetary compensation as follows:

Hanging Closet Door, Filling Holes & Painting by Owner (\$25.00 x 4 hours)	\$100.00
Replacement shower curtain & holder	25.00
Quote for replacement of 2 cupboards and drawers	568.05
Carpet Cleaning	399.00
Late Fee for Rent	25.00
Lease Break Fee	225.00
Registered Mail Cost for this application	43.10
Registered Mail Cost for this application	11.97
Unpaid rent	1,425.00
Quote for countertop replacement	951.00
Filing Fee	100.00
<b>Total Monetary Award Requested</b>	<b>\$3,873.12</b>

The landlord is seeking a monetary order for the above losses for this tenancy. The landlord testified that the tenants moved out without repairing or replacing several items such as re-hanging the closet door, and replacing the shower curtain and holder they had removed. The landlord is also seeking the cost of carpet cleaning as the tenants did not clean the carpet before they had moved out. The landlord confirmed that the carpet was in clean condition, but the tenants failed to pay for professional cleaning as required by the tenancy agreement.

The landlord is also seeking compensation for the cost of replacing the countertop and cupboards due to the tenants' unauthorized installation of a dishwasher. The landlord testified that the installation of this dishwasher caused damage that could not be fixed. The tenants testified that they had permission from the property manager to install the dishwasher. The landlord testified that she was shocked to discover that the cupboards had been cut, and had no idea about any arrangement allowing them to do so. The tenants testified that the property manager had handled all matters, and that they did

not proceed with the installation and modifications without the property manager's permission.

The landlord is seeking a monetary order for unpaid rent for the month of May 2019 less a deduction. The tenants do not dispute that they had withheld the May 2019 rent, but they had done so with the permission of the property manager as compensation for issues with the rental unit. The tenants submitted emails from the property manager about the May 2019 rent. The landlord feels that if any rent reduction was to be applied, that this would only apply to one of the tenants, and not all three. The tenants submitted email correspondence from the property manager dated April 29, 2019 that reads as follows: "we are not charging you Rent for the month of May".

### **Analysis**

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the landlord must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

#### ***Liability for not complying with this Act or a tenancy agreement***

**7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it

stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

**Section 26** of the Act, in part, states as follows:

**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.

Based on the evidence and testimony before me, I find that the property manager who was managing the rental unit during this tenancy had authorized a rent reduction for May 2019. In the absence of any references to the amount or who this rent reduction would apply to, one can reasonably make the assumption that no rent whatsoever was due for the Month of May 2019. Accordingly, I find that the tenants had the right to deduct the entire rent for May 2019, and the landlord's application to recover the May 2019 rent plus the late fee is dismissed without leave to reapply.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear. I have reviewed the landlord's monetary claim for damages, and have taken in consideration of the evidentiary materials submitted by the landlord, as well as the sworn testimony of both parties.

The landlord applied for reimbursement for the cost of carpet cleaning. The landlord confirmed that the carpets were clean when the tenants had moved out, but that they had not paid for professional cleaning as required in the tenancy agreement. The landlord did not submit any invoices to show that she had paid for carpet cleaning after this tenancy had ended. I am not satisfied that the landlord had suffered any losses related to carpet cleaning due to the tenants' failure to professionally clean the carpet. On this basis, this portion of the landlord's application is dismissed without leave to reapply.

The landlord is also seeking reimbursement for the cost of repairing and replacing the kitchen cupboards, drawers, and counters. The tenants testified that the property

manager had given them permission to make the alterations. Although I do not doubt that the landlord had no knowledge of these alterations, I find the tenants to be credible as the property manager had managed matters related to this tenancy, and may not have properly communicated all issues to the landlord. I find that the landlord has failed to provide sufficient evidence to support that the tenants had failed to comply with the *Act* or tenancy agreement, and furthermore I am not satisfied that the landlord had suffered any loss due to any alleged contravention of the *Act*. Accordingly, I dismiss this portion of the landlord's monetary claim without leave to reapply.

The landlord applied for compensation in the form of a "lease break" fee. I find that the tenants did not end this tenancy before the end of the fixed-term tenancy, nor did they end the tenancy in a manner that contravenes the *Act*. Accordingly, this portion of the landlord's monetary claim is dismissed without leave to reapply.

Based on the testimony and evidence submitted, I find that the landlord is entitled to the landlord's monetary claim in the amount of \$100.00 for the painting and filling of holes, as well as \$25.00 for the shower curtain and holder.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was only partially successful in their application, I find that the landlord is entitled to recover \$25.00 for the cost of filing this application.

The landlord had also applied to recover the cost of registered mail associated with this application. As section 72 of the *Act* only allows for recovery of the filing fee, and not the other associated costs of filing an application, I dismiss this portion of the landlord's application without leave to reapply.

The landlord continues to hold the tenants' security deposit of \$950.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenants' security deposit in satisfaction of the monetary claim. The remaining portion shall be returned to the tenants.

### **Conclusion**

I issue a Monetary Order in the amount of \$800.00 in the tenants' favour for the return of their security deposit less the monetary awards below.

Security Deposit	\$950.00
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Hanging Closet Door, Filling Holes & Painting by Owner (\$25.00 x 4 hours)	-100.00
Replacement shower curtain & holder	-25.00
Filing Fee	-25.00
<b>Total Monetary Order to Tenants</b>	<b>\$800.00</b>

The tenants are provided with this Order in the above terms and the landlord must be served with a copy of 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.

The remainder of the landlord's monetary claims are dismissed without leave to reapply.

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 2, 2019

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Residential Tenancy Branch