



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MacGregor Realty Ltd. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, MNDL-S, MNRL-S, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$245.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for a monetary order for \$1,900.00 of unpaid rent for the Landlord, retaining the security deposit to apply to this claim; and to recover the \$100.00 cost of their Application filing fee.

The Tenant, T.I., and an agent for the Landlord, D.M. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed

their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the tenancy began with the Tenants subletting the rental unit from the prior tenant from November 16, 2017 to July 31, 2018. At this point, the Parties signed a new tenancy agreement starting on August 1, 2018 and running to January 31, 2019, and then on a month-to-month basis thereafter. The Parties agreed that the rental unit is a single-family dwelling.

The Parties agreed on the following:

- the Tenants paid the Landlord a monthly rent of \$3,800.00, due on the first day of each month;
- the Tenants paid the Landlord a security deposit of \$1,900.00, and a pet damage deposit of \$1,900.00;
- the Parties signed a Mutual Agreement to End the Tenancy dated April 12, 2019, with an effective end date of July 15, 2019;
- the Tenants did not pay the Landlord rent for July 2019,
  - the Tenants owed the Landlord \$1,900.00 for two weeks' rent;
- the Landlord mailed the Tenants a cheque for \$1,205.00 for the deposits, which includes a deduction for the \$1,900.00 in rent owing for two weeks in July 2019.

The Parties agreed that the Agent did a move-out inspection with the previous tenant on November 3, 2017. The Agent said that he then did a move-in inspection with the Tenants on November 3, 2017, although he said he could not recall where the Tenant, T.I., was during the inspection. The Agent said he then emailed the condition inspection report ("CIR") to the Tenants for signature on November 6<sup>th</sup>, the 29<sup>th</sup>, and on December 20, 2017. He said he did not hear back from the Tenants in this regard.

In the hearing, the Landlord set out the particulars of his claim in greater detail. They are as follows:

	For	Amount
1	Cleaning	\$120.00
2	Gardening	\$125.00
3	Garage remotes	\$216.30
4	Unpaid rent for July 1 – 15, 2019	\$1,900.00
5	17 x \$25 late rent fees from tenancy	\$425.00
	<b>Total monetary order claim</b>	<b>\$2,786.30</b>

#### **#1    CLEANING → \$120.00**

The Agent said that he did a move-out inspection with the Tenants on July 15, 2019. He said: “As a whole, things were okay, but there were some deficiencies. [The Tenant] did take care of some of these, although some issues remained, such as cleaning inside the dishwasher.” The Agent said it had to be completely cleaned because of the smell. He said the blinds were dusty dirty, and that he:

...helped with the cleaning lady, as there were ten-foot-high ceilings. I didn't charge for my time. I had to get a ladder from new tenant. I wiped the blades of the ceiling fan and didn't charge for this. [The Tenant] and I had gone through the house. I had him clean the laundry room, because there were tons of clothes.

The Tenant said that he and the Agent met and did a “casual; walk-through.” The Tenant said that the Agent did not bring the move-in CIR. He said they were:

...very thorough. It went about an hour. I had to pick up my daughter, therefore, I confirmed that everything was okay here. [The Agent] said, ‘I'm just going to spend another hour or so and get back to you.’ Later that night he left a voicemail message stating that I had to come back to clean the dishwasher, the laundry room, some stains on a wall, and a hair in shower. I went back that night and did everything he had asked for on the voicemail – it took a couple hours. I took a video and submitted it as evidence.

I followed up the next morning – see text messages from July 17. I did what he asked and followed up with a text. If he'd asked me to do a better job, to his standards, I would have. It was done quite well – see the video. It was pretty neat and tidy.

He said they were there for three hours, I got a bill for four hours. I find it hard to believe these extra charges. We never filled out with the move-out report together.

The Landlord said that after the inspection, he had to go. He came back to do some more cleaning, but there were still deficiencies – the dishwasher, the blinds, the laundry room. We emailed the CIR back to him on July 19.

The Tenant said:

I tried to contact [the Agent] in the three days afterwards. None of those texts were replied to, until we were given invoices and the inspection report, which I thought was unfair. I did what he'd asked me to do. He didn't get back to me before hiring cleaners and gardeners.

The Agent submitted a copy of an email he received from the cleaner dated July 17, 2019. In this invoice, the cleaner charged \$30.00 per hour for four hours of work. She set out that she cleaned:

- the dishwasher,
- the oven,
- some components of the refrigerator,
- wiped walls, and
- cleaned the blinds.

## **#2    GARDENING → \$125.00**

The Agent said that the Tenants' responsibilities for gardening are set out in tenancy agreement, in the section entitled: "Yard Maintenance Addendum". He said the weeds on the right side of driveway and through the front flower bed to the front of the house were overgrown.

The Agent said that the, "Yard Maintenance Addendum" includes the following:

The tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, pruning plants (ivy etc.), shrubs & bushes (blackberry etc.), clearing snow and melting ice. The tenant is also responsible for weeding the flower beds, since this tenancy agreement requires the tenant to maintain the flower beds. If the grass and weeds grow higher than 4" (inches); the landlord, after delivering a warning letter, will hire a garden maintenance service company to complete the maintenance with the cost being added to the next month's rent as hereby agreed by the tenant.

The Parties signatures were at the bottom of this Addendum dated October 18, 2017.

The Tenant said that gardening:

... was never brought up in your walk-through at all. [The Agent] took his time, but a 3,500 square foot lot - the flower beds are 5 x 5 at the front, at most. In my eyes it's hard to believe it's going to take 4 – 5 hours to do that. If I had known it was a concern in the walk-through, I would have done something. We wanted to leave it in good shape. This was never brought to my attention. We cut the grass, raked the flower bed, it just wasn't brought to my attention.

The Agent said that they have:

...before and after pictures, and they are substantially different. A neighbour three or four houses down commented on the work that needs to be done, and asked if she could be hired to clean up the front yard, as she walks by it every day. It wasn't a company who would charge overhead, so I thought her rate was extremely good for the work that she did.

The Agent did not point out the before and after pictures of the garden, and I was unable to find any such photographs in the evidence before me.

The Agent submitted an email from the woman who did the gardening at the end of the tenancy. In her email she said: "The cost for the cleanup of the front yard at [residential property address] was \$125.00." She then gave details of how to pay her.

The Tenant said: "Could we agree that those beds are 5 x 5 or 5 x 6 – the frontage of the house is only 25 feet, and more than that is driveway.

The Agent said that he found someone to do gardening work from start to finish, and

“She took pride in her work.” He acknowledged that the gardener’s invoice did not set out the hours she worked on the garden, nor did he explain on how they settled on the price. He said: “She gave a quote to take care of the amount of work there was, and I thought that was reasonable.” He said it involved the full width of the property for the front yard.

The Tenant said: “She gardens for everyone in the neighbourhood. We’re not talking huge dollars here, but I wish there would have been better communication, as I would have handled it. It’s not large, large dollars, but the principle is that better communication was required – he never once brought up or talked about or expressed it as a concern.”

### **#3 TWO GARAGE REMOTES -- \$216.30**

The Agent said: “The two garage remotes were left on the counter top. [The Tenant] should have seen them on the counter. He said he did not receive them. I am perplexed. I left two remotes and he didn’t receive them?”

The Tenant said that he never had remotes for the garage while living there. “I never received them in the first place.”

The Agent said the CIR says there were two remotes for move-in and zero for the move out. “If I’d known in the beginning that he didn’t have them from the previous tenant – there was no mention that he had not received them. Unfortunately, that was a year and three quarters later that he said he never received them.”

The Tenant said that there was some overlap between the previous tenant moving out and the condition inspection on November 3, 2017. The Tenant said: “The gentleman who signed the lease initially, didn’t move out until the first week. There was an overlap of him moving out and us moving in. We had to request mail box keys from Canada Post, too. We didn’t receive keys or the remotes. The only explanation is that the gentleman packed them. If I had been part of inspection on move-in day.... They didn’t get up and walk away, but after the inspection - he didn’t move out for seven days afterwards.”

The Agent said: “That’s possible. I was the liaison between the tenants moving out and in. It’s possible. I assumed that the two of them had connected; they both had access at

the same time. The keys and remotes were left on the counter after move-out inspection with the previous tenant.”

#### **#4 UNPAID RENT → \$1,900.00**

The Agent said they did not receive any rent for first two weeks of July 2019. In his emails and subs, [the Tenant] stated: ‘You are entitled to keep the \$1,900.00 for the first two weeks in July.’

The Tenant said: “No dispute – I told him I was totally aware of this; no problem – just hold onto the pet deposit, and put it toward the rent, so it’s not an issue at all.”

#### **#5 LATE RENT FEES → \$425.00**

The Agent said that the Tenant was late paying rent 17 times. He said the rent for October 2018 was paid on time, and the initial rent on November 6, 2017, and February 1, 2019 was paid on time, but otherwise, he said the Tenant was late with the full rent payment.

The Tenant agreed that this was true, but that it was never an issue. He said:

I mentioned to [Agent’s assistant] that I would be doing it through an etransfer. With my bank, I can’t do more than \$3,000.00 in one day. I have to wait 24 hours for the extra \$800.00. If it was late, it was because of my banking situation. It would have been nice if this was communicated to me that this is a problem – it was just brought to my attention when I got the dispute package. The initial claim was just for the gardening and cleaning. These two came along as an afterthought.

The Parties then discussed/negotiated their respective positions, for which they were willing to settle. The Agent said: “We just have to balance our debits and credits for what we paid out, as well as the security and pet deposits. We paid for the garage remotes. The late fees are what’s allowed by the RTB. If I’m not going to get reimbursed for the garage remotes, I’m willing to reduce the late fees to \$216.30. We want to cover the out-costs that we have incurred.

The Tenant said: “Reduce the amount owing by \$425.00 to cover costs that have been

paid out. I'll grant you the gardening and the garage remotes, if you forgo the late fees. It's escalated from something small to . . . having said that, I see that the claim is \$461.00; if you're willing to pay back the \$425.00 I'm okay with that.

The Agent said: "What we're looking for is \$461.30, plus \$1,900.00 for a total of \$2,361.30. We kept the \$1,900.00 and withheld \$691.00, which was going to be for the late fees, gardening, and cleaning. Reimburse me with these late fees. Pay back the \$425.00, or just leave it to resolution. I'm happy to receive \$425.00. I'm agreeing to hold back \$120.00 + \$125.00 – \$1,205.00 already returned, plus \$1900.00

The Tenant said he's willing to pay for the cleaning and the gardening, if he is left with \$425.00 coming back.

The Agent said: "It should have been \$886.30, but with every experience you learn. I was not present for the pass off between the tenants. The Tenant said: "No hard feelings; just moving forward, this is [the Agent's] full-time business. A proper CIR was not done in my presence for move in or move out."

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

After going through each of the monetary claims, the Parties had an open discussion of the issues between them. They voluntarily agreed on a full and binding resolution to the outstanding issues at the end of the hearing. The Tenant said he is willing to pay for the cleaning, gardening, two remotes, and two weeks of rent claimed by the Landlord, and the Agent said he is willing to forego the late rent fees of \$425.00.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security and pet damage deposits of \$3,800.00 in satisfaction of the Landlord's monetary claim.

Accordingly, I find the Parties agreed to the following resolution of the issues:

	For	Amount
1	Cleaning	\$120.00



2	Gardening	\$125.00
3	Garage remotes	\$216.30
4	Unpaid rent for July 1 – 15, 2019	\$1,900.00
5	<del>17 x \$25 late rent fees from tenancy</del>	<del>\$425.00</del>
	<b>Sub-total Tenant owes Landlord</b>	<b>\$2,361.30</b>
	Security and pet damage deposits	\$3,800.00
	Less prior amount returned to Tenants	(\$1,205.00)
	<b>Total Amount owing to Tenant</b>	<b>\$ 233.70</b>

As the Parties came to a mutual agreement on the amount owing, I award the Landlord recovery of half of the \$100.00 Application filing fee, reducing the amount owing to the Tenants by \$50.00 to \$183.70.

The Landlord agrees to pay the Tenants the outstanding security and pet damage deposits of **\$183.70**, as soon as possible.

This settlement agreement was reached in accordance with section 63 of the Act. The Parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the Parties understood the binding nature of this full and final settlement of these matters.

### Conclusion

This matter was resolved by way of a mutually settled agreement. In recognition of this settlement agreement and based on the above, I Order the Landlord to pay the Tenants \$183.70 of their remaining security and pet damage deposits in full and final settlement of these matters.

The Tenants are given a Monetary Order of **\$183.70**, to serve and enforce upon the Landlord, if the Landlord fails to adhere to the terms of this Agreement within a reasonable amount of time.

This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: December 11, 2019

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Residential Tenancy Branch