



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **FINAL DECISION**

Dispute Codes      MNRL-S, MNDL-S, FFL

### Introduction

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

- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The "first hearing" on January 10, 2020 lasted approximately 8 minutes and the "second hearing" on March 17, 2020 lasted approximately 29 minutes.

The tenant did not attend both hearings. The tenant's agent attended the first hearing only.

The landlord's lawyer attended both hearings and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's lawyer confirmed that she had permission to represent the landlord at both hearings and she provided a written authorization to this effect.

### Preliminary Issue - Adjournment of First Hearing and Service of Documents

The first hearing on January 10, 2020 was adjourned because the tenant's agent said that he was told by the tenant that he had a heart attack, was in the hospital and was undergoing a medical procedure on the day of the first hearing. The landlord's lawyer had opposed the tenant's adjournment request. By way of my interim decision, dated January 13, 2020, I adjourned the landlord's application to the second hearing date of March 17, 2020.

The landlord confirmed receipt of my interim decision and the notice of rescheduled hearing to the March 17, 2020 date.

The tenant was sent copies of my interim decision and the notice of rescheduled hearing by the Residential Tenancy Branch ("RTB") to the two email addresses provided by the tenant's agent at the first hearing. In accordance with section 71(2)(c) of the *Act*, I find that the tenant was sufficiently served with my interim decision and the notice of rescheduled hearing by email.

The landlord's lawyer stated that the tenant was served with the landlord's application for dispute resolution hearing package on September 17, 2019, by way of registered mail to the tenant's lawyer's address. The landlord's lawyer confirmed that the tenant's lawyer was the agent that appeared on behalf of the tenant at the first hearing of this matter. She said that the tenant's lawyer was representing the tenant at the time of service. She claimed that this address was also included on the tenant's RTB application from September 2019. The landlord provided a Canada Post receipt with this application and confirmed the tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on September 22, 2019, five days after its registered mailing.

The landlord's lawyer confirmed that the landlord did not submit any further evidence for this application to the tenant or the RTB, after September 2019.

During the hearing, the landlord explained that there was no security deposit in the parties' written tenancy agreement, and she did not believe the landlord collected a deposit from the tenant during the tenancy. She stated that the landlord likely applied to obtain the deposit, in error. Accordingly, this portion of the landlord's application is dismissed with leave to reapply, in the event that there is found to be a security deposit, since the landlord's lawyer was unsure at the hearing.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damage to the rental unit?

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

### Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the submissions of the landlord's lawyer, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's lawyer stated the following facts. This tenancy began on June 1, 2019 and ended on March 21, 2019. Monthly rent in the amount of \$1,715.00 was payable on the first day of each month. Both parties signed a written tenancy agreement.

The landlord seeks a monetary order of \$35,000.00 including the \$100.00 application filing fee.

The landlord seeks unpaid rent of \$4,455.00 from the tenant. The landlord's lawyer said that the tenant failed to pay rent of \$1,640.00 for each month from August 2018 to March 2019, a period of eight months, totaling \$13,120.00. She explained that the landlord was deducted \$8,665.00 from the \$13,120.00 claimed, for a total of \$4,455.00.

The landlord's lawyer stated that the landlord was seeking a reduced monthly rent of \$1,640.00 instead of \$1,715.00, in compliance with a previous RTB order made by a different Arbitrator after a hearing on July 11, 2018 and a decision, dated July 15, 2018. The file numbers for that hearing appear on the front page of this decision. The landlord provided a copy of this decision in his evidence. The landlord's lawyer said that the landlord reduced \$8,565.00 for a monetary award and \$100.00 for the filing fee, both awarded to the tenant at the previous RTB hearing.

The landlord seeks bailiff costs of \$5,437.61 from the tenant. The landlord provided a paid invoice for same, indicating that the landlord paid a deposit of \$5,900.00, after which \$462.39 was credited back to the landlord, leaving a paid amount of \$5,437.61. The landlord's lawyer explained that the tenant refused to vacate the rental unit, a bailiff had to be hired by the landlord to serve and enforce a writ of possession issued by the RTB against the tenant. The landlord provided a copy of the writ of possession, dated March 14, 2019, which indicates it was enforced against the tenant on March 21, 2019, at the rental unit address.

The landlord seeks cleaning costs of \$5,775.00 from the tenant. The landlord provided an invoice for same and the landlord's lawyer confirmed that it was paid by the landlord. She maintained that the tenant failed to clean the rental unit when he vacated, contrary

to Residential Tenancy Policy Guideline 1. The landlord's lawyer pointed to photographs, at pages 42 to 78 of the landlord's evidence, which she said were taken on March 21, 2019, during the move-out inspection by the landlord. She claimed that the photographs show significant garbage and furniture were left inside and outside the rental unit, the tenant built his own pool in the backyard which had to be removed, there was green growth inside the bathroom, and there were significant damages and a failure to clean by the tenant. She explained that the landlord had the rental unit professionally cleaned with sanitary garbage disposal.

The landlord seeks \$19,232.39 for repair of damages from the tenant. The landlord provided an invoice for \$62,475.00 total and the landlord's lawyer confirmed that it was paid by the landlord. The landlord's lawyer said that the tenant damaged the rental unit, so the landlord had it professionally repaired. She explained that the landlord was not claiming for work on a bachelor suite, replacing the bathtub and toilets, or renovations. She stated that the landlord reduced his claim to keep it within the monetary jurisdiction of the RTB at \$35,000.00, so he abandoned the remaining amount. She maintained that after the landlord completed the repairs, his son moved in, not a new tenant.

### Analysis

On a balance of probabilities and for the reasons stated below, I make the following findings and orders, based on the undisputed evidence of the landlord.

As per section 26 of the *Act*, a tenant is required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I award the landlord \$4,455.00 for unpaid rent from August 2018 to March 2019, inclusive. I accept the landlord's undisputed evidence that the tenant failed to pay rent of \$13,120.00 to the landlord, as required by his tenancy agreement, and I accept the deduction of the \$8,665.00 amount from the \$13,120.00 total, pursuant to the order from the Arbitrator at the previous hearing.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;

2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Residential Tenancy Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 32 of the *Act*, states the following, in part:

*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.*

*(4) A tenant is not required to make repairs for reasonable wear and tear.*

I award the landlord \$5,437.61 for bailiff costs. I accept the landlord's undisputed evidence that this cost was incurred to remove the tenant from the rental unit on March 21, 2019, pursuant to a writ of possession, since the tenant did not leave voluntarily. The landlord provided a paid invoice with a breakdown of costs, for same.

I award the landlord \$5,775.00 for cleaning the rental unit. I accept the landlord's undisputed evidence that this cost was incurred by the landlord because the tenant failed to clean the rental unit when he vacated. The landlord provided numerous photographs of the extremely dirty condition of the rental unit. The photographs showed garbage inside and outside the rental unit, furniture including mattresses, couches, a television, and other items thrown outside the unit, green overgrowth all over the bathroom inside the unit, a makeshift pool created by the tenant that had to be removed, and a general state of uncleanliness all over the rental property. The landlord provided an invoice with a breakdown of costs, for same. I accept the landlord's lawyer's submission that the invoice was paid by the landlord. As per section 32(2) of the *Act* and Residential Tenancy Policy Guideline 1, I find that the tenant failed to properly clean the rental unit before vacating.

I award the landlord \$10,000.00 for repairs to the damages inside the rental unit. I find that this is a reasonable amount, given the high amount of the total invoice of \$62,475.00. I do not find that the tenant is responsible for a renovation of the unit, nor is he responsible for the bachelor suite, the replacement of the bathtub or the toilets. However, I find that the tenant is responsible for repair of damages to the bathrooms, three bedrooms, living room, dining room, and kitchen, as shown in the photographs. I accept the landlord's undisputed evidence that the above total cost was incurred by the landlord because the tenant failed to repair damages he caused to the rental unit. The landlord provided numerous photographs of the bad condition of the rental unit and numerous damages. The landlord provided an invoice with a breakdown of costs, for same. I accept the landlord's lawyer's submission that the invoice was paid by the landlord. As per section 32(3) of the *Act* and Residential Tenancy Policy Guideline 1, I find that the tenant failed to repair the damages caused by him, that were beyond reasonable wear and tear.

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenant.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$25,767.61 against the tenant. 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.

The landlord's application to retain the tenant's security deposit is dismissed with 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: March 17, 2020

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Residential Tenancy Branch