



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GREENBRIER HOLDINGS  
LTD. and [tenant name supprd to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, MNDCL-S, FFL

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- a monetary order for damage or compensation pursuant to section 67 of the *Act*;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 67 of the *Act*;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The landlord's property manager ("the landlord") appeared at the hearing and was given the opportunity to make submissions as well as present affirmed testimony and written evidence.

The tenant did not appear at the hearing. I kept the teleconference line open from the time the hearing was scheduled for an additional 15 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code for the tenant had been provided.

The landlord testified that the tenant was served with the Application for Dispute Resolution by registered mail sent on December 17, 2019. Registered mail is deemed received by the tenant on December 22, 2019 in accordance with section 90 of the *Act*. The landlord provided the Canada Post tracking number referenced on the first page of the decision. Pursuant to sections 89 and 90, I find the tenant was served with the Application for Dispute Resolution and evidentiary package on December 22, 2019.

Rule of Procedure 7.3 states:

**7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As I have found the tenant was served with the landlord's application and hearing documents, I proceeded with this hearing as per Rule of Procedure 7.3

Issue(s) to be Decided

Is the landlord entitled to a monetary order pursuant to section 67 of the *Act*?

Is the landlord entitled to retain the security deposit pursuant to sections 38 and 67 of the *Act*?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72(1) of the *Act*?

Background and Evidence

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

The landlord testified the fixed term tenancy began on December 17, 2018 with an effective end of tenancy date of December 31, 2019. The rent was \$1,400.00 monthly payable on the first of the month. A copy of the tenancy agreement was submitted as evidence.

At the beginning of the tenancy, the tenant provided a pet damage and a security deposit in the amount of \$700.00 each. The \$1,400.00 deposits are held by the landlord in Trust. The tenant did not provide written authorization for the landlord to keep the deposits.

The landlord testified that there had been a Residential Tenancy Branch dispute resolution hearing in October 2019 and a settlement agreement was drafted by the Arbitrator. (The file number is provided on the coversheet of this decision). The parties had agreed that the tenant would vacate the rental unit with his young child on November 30, 2019.

This tenancy agreement contained a clause (paragraph # 5) which stated that the tenant agreed to a \$500.00 liquidated damage payment if the tenant breached a material term of the tenancy agreement or if the tenant ended the tenancy by vacating before the end of any fixed term.

The landlord testified that after the tenant vacated the unit on November 30, 2019, a move-out inspection report was conducted on the same day and the tenant did not attend the inspection.

The landlord testified that the rental unit was in a building that resembled “an old motel” and that the walkways were painted on all levels and adjacent to the rental units in December 2019 by a painting company. The landlord provided testimony that the walk ways are approximately 36-inch in width, and that tenants in the building had an 18-inch walkway remaining to walk.

He testified that the tenants used the walkways whilst the painting company painted the building and left paint trails throughout the rental unit including pet marks on the carpets and washroom tub. The landlord testified that the flooring in the rental unit was approximately three-four years old.

The landlord submitted copies of estimates for flooring replacement, re-glazing of the bath and cleaning of the rental suite. The landlord testified that the condition of the rental unit was filthy. The landlord testified that there was damage to the bathtub, carpets and flooring caused by the tenant and his dogs.

The landlord therefore requested a monetary order list of claimed expenses totaling \$3083.48 as well as liquidated damages of \$500.00 calculated as follows:

ITEM	AMOUNT
Flooring	\$1995.73
Re-glazed bath	\$771.75
Rental unit cleaning	\$216.00
Filing fee	\$100.00
<b>TOTAL</b>	<b>\$3083.48</b>

The landlord requested authorization to apply the deposits in the amount of \$1400.00 to offset against the damage and replacement costs incurred in the rental unit.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish all of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

### Cleaning costs

The landlord submitted photographs of the rental unit which illustrated that the tenant had left the carpets, vinyl flooring and fridge unreasonably clean and dirty.

Under section 37(2) of the *Act*, the tenants must leave a rental unit *reasonably clean*.

### **Leaving the rental unit at the end of a tenancy**

**37 (1)** Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

In consideration of the uncontradicted evidence of the landlord, the evidence submitted, and the burden of proof required, I find on a balance of probabilities that the landlord has established the tenant did not leave the unit reasonably clean.

I accept the landlord's evidence which is supported by photographs and an invoice that the unit needed cleaning when the tenant left. I accept the amount requested as compensation for the cleaning expenses to have been incurred by the landlord.

I therefore find the landlord is entitled to a monetary award against the tenant in the amount of \$216.00.

Liquidated Damages:

The landlord claims liquidated damages pursuant to clause 5 of the tenancy agreement and advises that the rental unit is still vacant.

Residential Tenancy Policy Guideline 4 states:

“A liquidated damages clause is a clause in a tenancy agreement in which the parties agree in advance to the amount of the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is made. Otherwise, the clause may be held to constitute a penalty and as a result, is unenforceable “

In this case, the liquidated damages clause is intended to compensate the landlord for losses resulting from the costs of re-renting a unit after the tenants' breach.

Clause 5 of the tenancy agreement discusses liquidated damages, stating that the tenant is responsible for this cost. Considering the uncontradicted evidence of the landlord, the evidence submitted I find that the landlord and tenant did not agree that the \$500.00 liquidated damages could be retained by the landlord.

The tenant refused to accept the landlord's proposal in an email dated December 4, 2019 whereby the landlord proposed to retain the \$500.00 liquidated damages.

The parties reached a settlement agreement in a previous Arbitration hearing and ended the tenancy by mutual agreement. The landlord's evidence supports that the tenant refused to accept the landlord's proposal in an email dated December 4, 2019 whereby the landlord asked to retain the \$500.00 liquidated damages I find that if the

landlord intended to seek the liquidated damages, it should have been done as part of the settlement reached between the parties in the previous decision. It would be unfair to award the landlord liquidated damages if it was not contemplated by the tenant as part of the terms of the settlement agreement.

I find that the landlord is not entitled to a monetary award against the tenant for liquidated damages as the tenancy ended mutually by a settlement agreement.

### Carpets and Flooring

The landlord testified that the flooring in the rental unit was approximately three-four years old. I do not accept the landlord's uncontroverted evidence that carpets and flooring were damaged beyond the level of ordinary wear and tear.

Section 40 of the Residential Tenancy Policy guidelines states:

“When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item “

I find that the landlord's calculations for the reduced amount of compensation for the replacement carpet based on the useful life of the damaged carpet are inaccurate. I do not find that the tenant damaged the carpet as a result of the paint marks.

The policy guidelines indicate the lifespan of a carpet as ten years. I find that the carpets and vinyl should have been professionally cleaned and that the replacement of the carpet and flooring was unnecessary.

The move-out inspection report undertaken by the landlord states that the carpets were “dirty” and require cleaning. I find that the ordinary wear and tear was pre-existing. Accordingly, I dismiss the landlord's request for compensation for damage to the carpet.

Section 37(2) of the Act states:

### Leaving the rental unit at the end of a tenancy

**37 (1)** Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

- (2)When a tenant vacates a rental unit, the tenant must
- (a)leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
  - (b)give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I find that the tenant failed to clean the carpet and vinyl flooring and is in breach to maintain and ensure that the rental unit was left in a reasonable state of cleanliness.

The tenancy agreement stated that the carpets had to be professionally cleaned, the tenant failed to do so. I grant the landlord the sum of \$300.00 for professional cleaning of carpets and flooring.

#### Re-glazed Bathtub

The landlord applied for re-glazing of the bath tub due to the paint stains caused by the tenant and his dogs. The landlord submitted an estimate for \$771.75 from a re-glazing company.

The tenant provided photographs of the bathtub with the paint marks. I find that the landlord has failed to provide an invoice for the re-glazing of the bath tub. I do not find that it was reasonable for the landlord to re-glaze the bathtub in his entirety. I will not be allowing this part of the claim.

I find it there is causation relationship on part of the landlord which instructed the painting company. The company left a two-three feet walkway for the tenant to walk on with his young child and two dogs, I do not find it reasonable that the tenant was expected to jump over the painted portion leading to the steps below with a child and two dogs.

#### Offsetting

Using the provisions contained in section 72 of the *Act*, I allow the landlord to retain partial security deposit, in satisfaction of the monetary award.

I grant the landlord in the amount of \$566.00 calculated as follows:

ITEM	AMOUNT
Unit cleaning	\$216.00
Filing fee	\$50.00
Carpet cleaning	\$300.00
Less security and pet damage deposit held in Trust.	(\$1400.00)
Total owing to Tenant	\$834.00

### Filing Fee

As the landlord was partially successful in his application, he may recover \$50.00 of the filing fee pursuant to section 72 of the *Act*.

### Conclusion

I grant the landlord a monetary amount of \$566.00 against the tenant. The landlord must return the tenant the sum of \$834.00 comprising of the pet damage and partial security deposit within 14 days of receiving this decision. Should the landlord fail to pay this amount the tenant is at liberty to file an Application for Dispute Resolution seeking a monetary order.

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 16, 2020

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Residential Tenancy Branch