



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL, 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 or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") pursuant to section 67 of the *Act*;
- authorization to recover the filing fee for this application pursuant to section 72.

The landlord's Property Manager JK and the tenant KL attended and were given the opportunity to make submissions as well as present affirmed testimony and written evidence.

The Property Manager testified the tenants were served the Notice of Dispute Resolution together with the evidentiary package via Canada Post registered mail on February 27, 2020. I find that this satisfied the service requirements set out in sections 88 and 89 of the *Act*, and find the tenants were deemed to have received the documents in accordance with section 90 of the *Act* on March 3, 2020. Canada Post tracking numbers are listed on the first page of this decision.

At the outset, the Property Manager requested to amend the landlord's claim to add a request that any monetary order be deducted from the security deposit held by the landlord pursuant to section 72.

### Issue(s) to be Decided

Is the landlord entitled to the following?

- 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

The parties agreed the tenancy began June 1, 2016 and ended when the tenants vacated on January 31, 2020. Rent was payable on the first of each month in the amount of \$1321.00. At the beginning of the tenancy, the tenants provided a security deposit of \$600.00 which the landlord holds in Trust.

The parties agreed that a condition inspection was conducted on moving in which indicated that the unit was in all material respects in a reasonable condition apart from some condensation issues. They also agreed that the inspection on moving out indicated that some cleaning was required. A copy of the report was submitted in evidence.

The Property Manager testified that at the commencement of the tenancy that the oil tank was at 90 per cent capacity and when the tenants vacated the rental unit the oil tank was empty and had to be refilled. An invoice was provided and submitted in evidence.

The tenant testified that the furnace did not function at capacity. She affirmed that the rental unit was an old house, and the furnace in the house did not heat up sufficiently to warm the rental property. The tenant testified that they had to purchase 5 portable heaters to warm the rental property and that they struggled to keep the mold and mildew in control.

The tenant testified that the heating problem was reported to the Property Manager and she was aware of the problem. The tenant affirmed that her partner had pointed out to the Property Manager that the ducting in the basement ceiling was not connected to the furnace. The tenant affirmed that this was the reason why the rental property remained cold and there were issues of condensation.

The Property Manager affirmed that she had visited the rental property and had seen the portable heaters but did not question why the tenant had 5 portable heaters.

The Property Manager affirmed that the tenants emptied the fuel tank to an extremely low level requiring the “bleeding” of the furnace. The landlord is also claiming the costs for the filter and air ducts to be replaced due to the neglect of the tenants in allowing the oil in the tank to become empty and causing air to infiltrate in the tank.

The landlord claims the following:

ITEM	AMOUNT
Carpet cleaning costs	\$ 332.85
End of tenancy cleaning	\$ 450.00
Fuel	\$ 1,398.42
Bleeding & Servicing	\$ 281.40
Total Amount claimed by landlord	\$2,462.67

In support of her testimony, the landlord submitted a condition inspection report on moving out which indicated that cleaning was needed in some areas of the rental unit. The landlord also submitted photographs of unit taken shortly after the tenant vacated supporting her testimony.

The tenant testified that she left the unit reasonably clean, “wiped the walls, swept the floors and vacuumed” and denied there was any need for the cleaning claimed by the Property Manager. The tenant testified that the cleaning was “above and beyond” and that the photographs illustrated the amount of condensation on the window panes and inside the rental property, which became worse when they vacated the property.

The property Manager testified that the carpets were not cleaned when the tenants vacated the rental property. The tenant disputed this and testified that the reason why the Notice to End Tenancy was served was the fact that the property was going to be demolished.

### Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and in testimony. I will only refer to certain aspects of the submissions and evidence in my findings.

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. In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award.

The landlord's claims as follows

### Cleaning costs

I have considered all the evidence submitted by the parties including their testimony and supporting evidence. I have considered the photographs taken shortly after the tenants vacated and the supporting condition inspection report.

I have considered the tenant's photographic evidence which I find showed general views of the rental property. I therefore prefer the tenant's evidence in this regard to the landlord's evidence and give the tenant's evidence greater weight.

Section 37(2) of the Act states that the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, as follows:

Considering the evidence and testimony, I find the landlord has not met the burden of proof on a balance of probabilities and that the tenant did leave the unit reasonably clean. I find that the photographs indicate condensation in the property after the rental unit was cleaned. I dismiss the landlord's claim for the \$450.00 for the cleaning of the rental unit.

#### Carpet cleaning

Section 37(2) of the Act states that the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, as follows:

- (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, [...]*

The parties were in dispute in relation to the cleaning of the carpets. The tenant testified that the cleaning was not required as the rental property was going to be demolished.

I have reviewed the evidence and testimonies of the parties and the evidentiary materials filed in evidence and find that the owners of the property were due to move into the property whilst plans were being finalized for demolition.

In view of this, it is the tenant's responsibility to ensure that the carpets in the rental unit are left reasonably clean under section 37(2) of the *Act*. I allow the landlord the sum of \$332.85 for steam cleaning of the carpets.

#### Bleeding and Service of Oil tank.

The landlord has provided evidence that the oil tank was allowed to run dry and required bleeding. The tenants agreed that they had used the oil from the oil tank as fuel to heat the rental property together with the portable heaters.

I accept the landlord's testimony regarding the problems with the furnace and that it required bleeding. I find that the tenants are responsible for allowing the air in the oil tank. The landlord is entitled to the service and bleeding of the oil tank. I award the landlord the sum of \$281.40

The landlord submitted an invoice for the replacement of oil in the oil tank for the sum of \$1,398.42

Section 32(1) of the *Act*, places the following obligation on the landlord to repair and maintain rental units:

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

**32 (1)**A landlord must provide and maintain residential property in a state of decoration and repair that

(a)complies with the health, safety and housing standards required by law, and

(b)having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(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.

I find that the Property Manager had “knowledge” that the heating in the rental property was not working sufficiently. The tenants had brought this to the attention of the landlord that the duct in the ceiling was not connected to the furnace. The Property Manager inspected the property and was aware that the tenants were attempting to heat the rental unit with the portable heaters, despite the mold and condensation issues.

It was the landlord’s responsibility to maintain and repair the duct in the ceiling to ensure that the tenant’s heating in the property was maintained and in a good working condition.

Accordingly, the landlord’s claim for the replacement oil in the oil tank is dismissed based on section 32 of the *Act*, that a landlord must maintain the property and comply with health, safety and housing standards.

Summary of award

The landlord is entitled to following:

ITEM	AMOUNT
Carpet cleaning costs	\$332.85
Service of furnace & oil filter	\$281.40
Filing fee	\$50.00
Less security deposit	(\$600.00)
<b>Total monetary amount to landlord.</b>	<b>\$ 64.25</b>

As the landlord has only been partially successful, the landlord is entitled to \$50.00 filing fee for this application.

The landlord is entitled to a monetary award of \$64.25 Pursuant to section 72, I direct that the monetary award herein be satisfied from the security deposit and the tenants to pay the landlord the sum of \$64.25 including the filing fee.

Conclusion

This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court

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: April 21, 2020

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Residential Tenancy Branch