



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

On March 15, 2020, the Landlords applied for a Dispute Resolution proceeding seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking to apply the security deposit towards these debts pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Landlords attended the hearing and the Tenant attended as well. All parties in attendance provided a solemn affirmation.

The Landlords advised that the Tenant did not provide a forwarding address in writing, so they enlisted the services of a skip tracer to find a service address for the Tenant. They then served the Notice of Hearing and evidence package to the Tenant on or around March 24, 2020 by expedited service, as Canada Post would not accept registered mail delivery due to the pandemic crisis. The Tenant acknowledged that she received this package on or around March 27, 2020, and she made no submissions with respect to the method of service. Based on this undisputed testimony, I am satisfied that the Tenant was served the Landlords’ Notice of Hearing and evidence package.

The Tenant advised that she served her evidence to the Landlord by registered mail on April 3, 2020 and the Landlords confirmed that they received this package. As service of this evidence complied with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to apply the security deposit towards these debts?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 1, 2018 as a fixed term tenancy of one year; however, the Tenant was permitted to move into the rental unit on August 25, 2018. Rent was established at \$1,650.00 per month and was due on the first day of each month. A security deposit of \$825.00 was also paid. The tenancy ended on June 30, 2019 when the Tenant gave up vacant possession of the rental unit. A signed copy of the tenancy agreement was submitted as documentary evidence.

All parties agreed that a move-in inspection report was conducted on August 25, 2018 and that a move-out inspection report was conducted on June 30, 2019. A copy of the move-in and move-out inspection report was submitted as documentary evidence.

All parties also agreed that the Tenant did not provide a forwarding address in writing.

The Landlords advised that they are seeking compensation in the amount of **\$2,475.00** because the Tenant signed a fixed term tenancy ending on August 1, 2019, but she gave notice to end her tenancy early and gave up vacant possession of the rental unit on June 30, 2019. The amount they are seeking compensation for is for July 2019 rent and half of August 2019 rent. They attempted to mutually agree to end the tenancy with the Tenant, but these attempts were unsuccessful.

They stated that they attempted to mitigate their loss by advertising the rental unit on free online sites, and they also spent \$50.00 for a paid advertisement as well. They had a record of approximately 20 prospective tenants that they had contact with and attempted to re-rent as of July 2019. As Landlord N.T. worked full-time, she estimated that she took 10 cabs from work to home and back to show the rental unit to the prospective tenants. There were many efforts to coordinate viewings but often times the prospective tenants were not reliable and would not show up. They estimated that they spent 30 – 40 hours of their time doing administrative tasks related to re-renting and cleaning the rental unit. They stated that on the weekend the Tenant moved out, they were scheduled to attend to a family matter out of the country; however, they were unable to as they stayed in town to deal with the Tenant. They eventually found a new

tenant, and in an effort to minimize their loss, they attempted to persuade the new tenant to move in earlier. However, the earliest the new tenant was able to move in was August 15, 2019. They submitted a copy of this new tenancy agreement as documentary evidence, but they did not submit any other evidence to support their attempts to re-rent the rental unit.

The Tenant made several references to issues that she had with the rental unit, including that it was her belief that the rental unit was an illegal suite, that there was an issue with the smoke alarm, that the air circulation was poor resulting in mould, that there were silverfish and spiders, that there was some issue with a drainage hole resulting in water being heard, and that some of these issues contributed to her daughter's development of eczema. However, she confirmed that she never advised the Landlords of any of these issues in writing during the tenancy. She also stated that she did not consider that any of these issues were breach of a material term of the tenancy, or that she ended the tenancy due to a breach of a material term. She stated that she emailed her notice to end her tenancy to the Landlords on June 3, 2019 and she acknowledged that she did not have a mutual agreement to end the tenancy. She questioned where evidence of the Landlords attempts to re-rent the rental unit was and referenced their email exchanges which demonstrated that the Landlords only attempted to show the rental unit one time. Thus, it is her position that the Landlords did not mitigate their loss after she gave up vacant possession of the rental unit.

The Landlords advised that they are seeking compensation in the amount of **\$1,650.00** for the cost of liquidated damages because the Tenant ended the fixed term tenancy early. They confirmed that the heads of claim numbered four, five, and six on their monetary order worksheet were amounts that were incorporated into this claim for liquidated damages. They referenced clause five in the tenancy agreement which outlined that liquidated damages would be charged if the Tenant ended the fixed term tenancy early. In addition to the time, effort, and costs noted above related to their efforts to re-rent the rental unit, they also spent \$100.00 to hire a skip tracer to find the Tenant's new address; however, they did not submit a receipt to support this cost.

The Tenant referenced the email exchanges between her and the Landlords where she suggested that the Landlords could keep her security deposit in lieu of liquidated damages; however, she acknowledged that this was simply her suggestion to the Landlords. She confirmed that she never had an agreement in writing with the Landlords that there was any such agreement.

The Landlords advised that they are seeking compensation in the amounts of **\$189.00** for the cost of window cleaning and **\$47.25** for the cost of electrical wiring repair. They stated that the bathroom fan was wired to be used in conjunction with the light and that the Tenant had illegally re-wired this so that the fan was no longer connected to the light switch. Upon conducting the move-out inspection, they noticed mould that had developed on the windows and they speculated that moisture had built up in the rental unit during the tenancy because the Tenant disconnected the fan and had not used it as

often as was necessary to remove excess humidity. The mould was noted and agreed to on the move-out inspection report. The Landlords submitted receipts for the window cleaning and the electrical wiring repair.

The Tenant advised that she agreed to pay for these issues at the end of the tenancy; however, she wanted to see the receipts for these costs first. She referenced Policy Guideline # 1 and it is her position that she is only responsible for cleaning of the inside of the windows. As well, she wanted proof that the window cleaning bill was only for the rental unit and not for the whole house.

The Landlords advised that they are seeking compensation in the amount of **\$140.88** for the cost of professional carpet cleaning as required pursuant to clause 23 of the tenancy agreement. They provided the Tenant with a receipt at the start of the tenancy demonstrating that the carpets were professionally cleaned, and they reminded the Tenant to have the carpet cleaned at the end of the tenancy.

The Tenant again referenced Policy Guideline # 1 and it is her position that she is not responsible for this cost as she lived in the rental unit for less than one year.

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38 of the *Act* outlines how the Landlords must deal with the security deposit at the end of the tenancy. However, as the Landlords never received a forwarding address in writing from the Tenant, I am satisfied that the Landlords had no obligation to deal with the deposit until they were provided with a forwarding address in writing.

Pursuant to Sections 24 and 36 of the *Act*, as the Landlords conducted move-in and move-out inspection reports with the Tenant, I am satisfied that they have complied with the *Act* and did not extinguish their right to claim against the security deposit for any damages incurred.

With respect to the Landlords' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlords' claim for lost rent, there is no dispute that the parties entered into a fixed term tenancy agreement from September 1, 2018 ending August 31, 2019, yet the tenancy effectively ended when Tenant gave up vacant possession of the rental unit on June 30, 2019. Sections 44 and 45 of the *Act* set out how tenancies end, and Section 52 specifies that the Tenant must give written notice that contains specific items such as a signature, to end a tenancy. As well, this notice cannot be effective earlier than the date specified in the tenancy agreement as the end of the tenancy.

While the Tenant's notice did not comply with the *Act*, the Tenant still gave up vacant possession of the rental unit on June 30, 2019. Although she made some submissions with respect to her belief that the condition of the rental unit was not sufficient, I find it important to note that she did not ever raise these concerns with the Landlords in writing during the tenancy. I also find it interesting to note that the Tenant only looked into her rights and responsibilities under the *Act* after the Landlords made this Application. Based on this, and in my view the Tenant's questionable testimony, I find that I am suspicious of the truthfulness of her submissions on the whole as they appear mostly to be crafted after the tenancy had ended. As such, I find that I am doubtful of the credibility and reliability of her submissions. I find it more likely than not that her submissions were insincerely fashioned after receiving the Landlords' Application. As such, I give little weight to her evidence or testimony and I prefer the Landlords' evidence on the whole.

Given that her notice to end the tenancy was effective for a date earlier than the end of the fixed term tenancy, and that there was no evidence that the Tenant ended the tenancy under a breach of a material term, I am not satisfied that the Tenant ended the tenancy in accordance with the *Act*. Therefore, I find that the Tenant gave up vacant possession of the rental unit contrary to Section 45 of the *Act*. Moreover, I find that the testimony indicates that as a result of the Tenant's actions, the Landlords could have suffered a rental loss.

I find it important to note that Policy Guideline # 5 outlines the Landlords' duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Additionally, in claims for loss of rental income in circumstances where the Tenant ends the tenancy contrary to the provisions of the Legislation, the Landlords claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

With respect to the Landlords' request for liquidated damages, I find it important to note that Policy Guideline # 4 states that a "liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement" and that the "amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into". This guideline also sets out the following tests to determine if this clause is a penalty or a liquidated damages clause:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

Based on the testimony before me, the undisputed evidence is that the Tenant ended the tenancy contrary to the *Act*. I am also satisfied that upon learning of this, the Landlords made reasonable attempts to re-rent the rental unit as quickly as possible after receiving the Tenant's notice. As they were able to re-rent the rental unit on August 15, 2019, I am satisfied that the Tenant is responsible for the July 2019 rent and the portion of August 2019 rent that was lost. Consequently, I grant the Landlords a monetary award in the amount of **\$2,475.00** to satisfy the Landlords' loss of rent owing for this time period.

Regarding the Landlords' claims for liquidated damages, I am satisfied that there was a liquidated damages clause in the tenancy agreement that both parties had agreed to. However, while I am satisfied that the Landlords mitigated their loss and re-rented the premises as quickly as possible and that there were more likely than not significant efforts and costs undertaken to re-rent the rental unit, I do not find that the Landlords have provided any documentary evidence to support that their efforts totalled \$1,650.00. Furthermore, the amount of liquidated damages is supposed to be a genuine pre-estimate of loss to re-rent the rental unit, and as this amount simply appears to be the amount of rent owing per month, I do not find that this is a genuine pre-estimate, but rather a penalty. Given that the Tenant broke the fixed term tenancy early, had the Landlords noted an amount that was an actual genuine pre-estimate of loss and had they supported that amount with evidence, that amount would likely have been awarded. As this amount appears to be more of a penalty than a genuine pre-estimate, I dismiss this claim in its entirety.

With respect to the Landlords' claims for compensation in the amounts of \$189.00 for the cost of window cleaning and \$47.25 for the cost of electrical wiring repair, while the Tenant cited Policy Guideline # 1 as her suggestion that she should not be responsible for cleaning the outside of the windows, I find it important to note that that policy guideline actually states that "The tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould. The tenant is responsible for cleaning the inside and outside of the balcony doors, windows and tracks during, and at the end of the tenancy. The landlord is responsible for cleaning the outside of the windows, at reasonable intervals." Furthermore, as the Tenant agreed to pay for this cost at the end of the tenancy, I am satisfied that the Landlords have established this claim.

In addition, the Tenant did not refute re-wiring the bathroom fan, and it is not clear to me why she believed this was something that she was permitted to do without the

Landlords' authorization. As such, I am satisfied that this action likely exacerbated the humidity issue, leading to the presence of mould. Ultimately, I am satisfied that the Landlords have substantiated this claim as well and I grant the Landlords a monetary award in the total amount of **\$236.25** to satisfy these claims.

Finally, regarding the Landlords' claim for compensation in the amount of \$140.88 for the cost of professional carpet cleaning, while the Tenant believes she is not required to clean the carpets at the end of the tenancy because she lived there for less than a year, I find it important to note that the policy guideline she refers to states that "Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year." Furthermore, I am satisfied by the undisputed evidence that the tenancy agreement contains a term requiring the Tenant to clean the carpet at the end of the tenancy. While the term requiring the carpets to be professionally cleaned may be found to be unconscionable, the Tenant did not raise this as an issue. Regardless, as I am satisfied that there is a term in the tenancy agreement requiring the carpet to be cleaned at the end of the tenancy, and as the Tenant had not cleaned the carpet, I am satisfied that the Landlords have established this claim. Consequently, I grant the Landlords a monetary award in the amount of **\$140.88** to satisfy this claim.

As the Landlords were successful in their claims, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlords to retain the security deposit in partial satisfaction of the amount awarded.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Tenant to the Landlord**

June and August 2019 rental loss	\$2,475.00
Window cleaning	\$189.00
Electrical wiring repair	\$47.25
Carpet cleaning	\$140.88
Recovery of filing fee	\$100.00
Security deposit	-\$825.00
<b>TOTAL MONETARY AWARD</b>	<b>\$2,127.13</b>

#### Conclusion

The Landlords are provided with a Monetary Order in the amount of **\$2,127.13** in the above terms, and 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.

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 18, 2020

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Residential Tenancy Branch