



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

This hearing dealt with applications from both the landlords and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The landlords applied for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security and pet damage deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee for their application from the tenant pursuant to section 72.

The tenant named the landlord GW as respondent and applied for:

- A return of the security and pet damage deposit for this tenancy pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was assisted by their advocate.

As both parties were present service was confirmed. The parties each confirmed receipt of the respective materials. Based on the testimonies I find each party was duly served with the materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Is either party entitled to the security and pet damage deposit for this tenancy?

Are the landlords entitled to recover their filing fee from the tenant?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

This periodic tenancy began in July 2016. A security deposit of \$600.00 and pet damage deposit of \$600.00 were paid at the start of the tenancy and are still held by the landlords. Rent was paid in full through to April 30, 2019, the end of the tenancy while the tenant vacated the suite by March 31, 2019.

The parties testified that they performed a move-out inspection together and completed a condition inspection report on March 31, 2019. Neither party submitted a copy of the condition inspection report. Both parties made reference to it and claimed that it had been submitted but were unable to identify where it was located in their evidence package.

The parties testified that the tenant did not provide authorization that the landlord may make any deduction from the deposits for this tenancy. The landlord submits that the rental unit was in a state of considerable disrepair requiring cleaning, maintenance and repair work to be performed. The landlord said that they were unable to estimate the cost of the work required at the time of the move-out inspection. The landlord submitted into evidence photographs of the suite and various invoices for work performed. The landlord seeks a monetary award in the amount of \$5,073.48 for the various work completed including cleaning, painting of the suite, pest control, appliance maintenance and replacing lightbulbs in fixtures as well as lost rental income for May through July.

The tenant provided a forwarding address by a letter dated April 1, 2019. The landlord did not return any portion of the security and pet damage deposit and filed an application for authorization to retain the deposits on March 8, 2020.

At the hearing the tenant testified that while they do not agree with the full amount of the monetary claim of the landlords they are in ill health and did not clean the suite to the best of their ability and confirmed that they had broken a light fixture during their tenancy. The tenant states that there was ongoing issues with bed bugs during their tenancy and the issue was raised with the landlord on earlier occasions.

### Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security and pet damage deposit or file for dispute resolution for authorization to retain the security and pet damage deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the deposits. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security and pet damage deposit to offset damages or losses arising out of the tenancy.

In the present case the tenancy ended April 30, 2019 after the tenant had provided a forwarding address on April 1, 2019. The landlord filed their application for authorization to retain the deposits for this tenancy on March 8, 2020, 11 months after the commencement of time.

Based on the evidence before me, I find that the landlords have neither applied for dispute resolution nor returned the tenant's security deposit in full within 15 days of the tenancy ending. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$2,400.00 Monetary Order, double the value of the \$1,200.00 security and pet damage deposit paid for this tenancy.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

The parties both testified that a condition inspection report was prepared at the start and end of the tenancy but none appears to have been submitted into evidence. The parties were asked several times to identify the file name under which the condition inspection report could be found but were unable to provide information on how it was submitted.

Residential Tenancy Rule of Procedure 7.4 provides that “Evidence must be presented by the party who submitted it”. While both parties testified that a condition inspection report exists neither party presented a copy of the actual report. While some reference was made to having submitted a copy into evidence the parties were unable to disclose where the document could be found or the file name under which it was provided.

I find in the absence of a proper condition inspection report, completed and signed by both parties at the start of the tenancy, there is insufficient evidence in support of the landlord’s claim for a monetary award for damages and loss. While I accept that the landlord has incurred some costs for work done to the rental unit, I am unable to determine on a balance of probabilities that all of this work was necessitated due to the actions or negligence of the tenant.

The tenant has provided some testimony stating that due to their health they were unable to clean the rental unit as thoroughly as they otherwise would have been able and that there were some light fixtures they broke during the tenancy. Based on the testimony of the tenant I find that there are some costs for which the tenant is responsible. The landlord has submitted into evidence invoices for cleaning the suite of \$400.00 and for repairs to “the bathroom fan, closet, light covers and replacing burnt out light bulbs” of \$300.32. The invoice for the various work done is not itemized so it is unclear what portion of the total cost is strictly for the repairs to the light fixtures. I find it appropriate to issue a monetary award in the landlord’s favour in the amount of \$400.00 for cleaning and \$100.00, approximately 1/3 of the invoice for repair work.

I find that based on the totality of the evidence I am unable to find that the other amounts claimed by the landlord is a result of the tenancy. The tenant has provided testimony and evidence that the presence of bed bugs was an issue throughout the tenancy. I find that the landlord has not shown on a balance that the bed bugs were caused by the tenant and therefore the cost of pest control services is not one that arises due to a breach by the tenant.

Similarly, I find that the landlord has not met their evidentiary burden to demonstrate that the cost of such items as painting the rental unit and repair of appliances arises due to a breach by the tenant. In the absence of a condition inspection report I find there is insufficient evidence of the state of the rental unit at the start of the tenancy. Accordingly, I dismiss this portion of the landlord’s claim.

I further find that the landlord’s claim for three additional months of loss of rental income is not supported in the evidence. Even if the tenant had left the rental unit in a state of

disrepair requiring some work to be done, I find that the landlord's position that they were unable to find a new occupant for three months to be unreasonable. While I accept that some cleaning was required, the tenant vacated the rental unit on March 31, 2019. The landlord did not provide cogent explanation as to why they were unable to complete any necessary work for close to a quarter of the year. I do not find there to be sufficient evidence that the tenant left the rental unit in such a state of disrepair that it required several months of vacant work before a new occupant could take possession of the suite. I find that any loss of rental income is not a loss that is due to the tenant and therefore dismiss this portion of the landlord's claim.

As the landlord was not wholly successful in their claim I decline to issue an order allowing them to recover their filing fee.

### Conclusion

I issue a monetary award in the tenant's favour in the amount of \$1,900.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Return of Pet Damage & Security Deposits (\$600.00 + \$600.00= \$1,200.00)	\$1,200.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	\$1,200.00
Less Monetary Award to Landlord for Damages and Loss	-\$500.00
<b>Total Monetary Order</b>	<b>\$1,900.00</b>

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 6, 2020

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Residential Tenancy Branch