



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNRL-S, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the Residential Tenancy Act, (the “*Act*”), for a monetary order for unpaid rent or utilities, for a monetary order for damages, permission to retain the security deposit and an order to recover the cost of filing the application. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that the documents were sent by registered mail on November 22, 2019, a Canada Post tracking number was provided as evidence of service. Section 90 of the *Act* determines that documents served in this manner are deemed to have been served five days later. I find that the Tenant had been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

- Is the Landlord entitled to monetary order for unpaid rent and utilities?
- Is the Landlord entitled to monetary order for damage?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to recover the filing fee for this application?

### Background and Evidence

The Landlord testified that the tenancy began on January 15, 2019, as a month-to-month tenancy. Rent in the amount of \$1,500.00 was to be paid by the first day of each month, and the Landlord had been given a \$750.00 security deposit at the outset of the tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they issued a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10-Day Notice) to the Tenant on September 22, 2019, by personally serving the Notice to the Tenant. The Notice has an effective date of October 1, 2019, and an outstanding rent amount of \$1,500.00 for September 2019. The Landlord also testified that the Tenant did not pay the rent as indicated on the Notice and did not vacate the rental unit until October 12, 2019. The Landlord is requesting a monetary order for unpaid rent for September and October 2019 in the amount of \$3,000.00.

The Landlord testified that the Tenant moved out of the rental unit on October 12, 2019, and that the Landlord and the Tenant conducted the move-out inspection that same day. The Landlord testified that the move-in inspection had not been completed for this tenancy. The Landlord provided a copy of the move-out inspection and twenty-five pictures taken of the condition of the rental unit at the time of the inspection, into documentary evidence.

The Landlord is requesting \$365.00 for cleaning the rental unit after the Tenant moved out, \$150.00 to repair a coffee table the Tenant damaged, \$1,394.60 to replace a mattress the Tenant damaged during the tenancy, and \$500.00 to repaint the rental unit at the end of tenancy. The Landlord provided a copy of the invoice for a new mattress into documentary evidence.

## Analysis

Based on the evidence before me, the testimony of the Landlords, and on a balance of probabilities that:

I accept the undisputed testimony of the Landlord that the Tenant moved out, in accordance with a 10-Day Notice to End Tenancy for Unpaid Rent on October 12, 2019.

I also accept the undisputed testimony of the Landlord that the Tenant did not pay the rent for September and October 2019 as required by their tenancy agreement. Section 26 of the *Act* states the following:

### ***Rules about payment and non-payment of rent***

**26 (1)** *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The Landlord has requested compensation to recover the unpaid rent in the amount of \$3,000.00 for September and October 2019. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this case, I find that the Tenant's breach of section 26 of the *Act* resulted in a loss of rental income to the Landlord. I also find that the Landlord has provided sufficient evidence to prove the value of that loss and that she took reasonable steps to minimize the losses due to the Tenant's breach. Therefore, I find that the Landlord has established an entitlement to the recovery of the outstanding rent for the months of September and October 2019. I award the Landlord the recovery of the \$3,000.00 in outstanding rent for this period.

I accept the testimony of the Landlord that they did not conduct the move-in inspection for this tenancy, as required under *Act*. Section 23 outlines the consequence for a landlord when the inspection requirements are not met.

***Consequences for tenant and landlord if report requirements not met***

***23 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord***

*(a) does not comply with section 23 (3) [2 opportunities for inspection],*

*(b) having complied with section 23 (3), does not participate on either occasion, or*

*(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

I find that the Landlord breached section 23 of the *Act* when they did not complete the required move-in inspection of the rental unit. Consequently, I find that the Landlord has extinguished her right to make a claim against the security deposit for damage to the residential property. However, I find that part of the Landlord's application is to recover outstanding rent for the rental unit and therefore, the Landlord does have a right to claim against the security deposit for unpaid rent, in this case.

However, I have reviewed the move-out inspection, entered into documentary evidence by the Landlord, and I noted a couple of inconsistencies that have caused me to question the validity of this document. The first being inconsistency in dates; sections G and H of this document record a move out date of September 6, 2019. However, section Z (2) of this same document records a date of October 7, 2019; and the Landlord's testimony, is different yet again, that the move out inspection had been conducted with the Tenant on October 12, 2019. The second inconsistency was that the move-out inspection report been amended, but that the amendment had only been initialled by the Landlord (J.M.)

and not the Tenant. The Landlord offered no explanation during their testimony regarding the amendments to the move-out inspection.

Due to these inconstancies, I find that I cannot accept this move-out inspection is not a reliable account of the condition of the rental unit at the end of this tenancy. Therefore, I find that the move-out inspection report provided into documentary evidence by the Landlord to be unreliable, and I will not consider in my decision.

In the absence of a reliable move-in/move-out inspection report, I must rely on verbal testimony given during this hearing and the remaining documentary evidence regarding the condition of the rental unit at the beginning and the end of the tenancy.

Regarding the Landlord's claim for compensation in the amount of \$365.00 for cleaning the rental unit at the end of this tenancy, I accept the testimony of the Landlord supported by their picture evidence that the Tenant had returned the rental unit in an unclean state at the end of the tenancy. Section 37(2) of the *Act* requires that a tenant return the rental unit reasonably clean at the end of the tenancy.

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

***37 (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 breached section 37 of the *Act* when they returned the rental unit to the Landlord uncleaned and left behind several of their possession. However, after reviewing all of the Landlord document evidence, I noted that the Landlord has failed to submit a copy of the invoice for cleaning into documentary evidence, I find that the Landlord has failed to provide sufficient documentary evidence, to prove the cost of that loss. Therefore, I must decline to award the Landlord the return of the cleaning cost.

As for the remainder of the Landlord's claim for compensation, in the amount of \$2,044.60; consisting of \$150.00 for refinishing a coffee table, \$1,394.60 for replacing a queen-sized mattress, and \$500.00 in labour costs for painting the rental unit at the end of this tenancy.

In my review of the Landlord documentary evidence, I noted that there is no evidence before me to show the condition of the rental unit at the beginning of this tenancy. The Landlord has submitted sufficient evidence to show the condition of the rental property at the end of the tenancy. However, in the absence of evidence to compare the end of tenancy evidence to, I am unable to determine if there had been a change in the condition of the rental unit during this tenancy.

Overall, I find that the Landlord has failed to prove a breach of section 37 of the *Act* by the Tenant in relation to these remaining claims. Therefore, I dismiss the remainder of the Landlord's claims for compensation in the amount of \$2,044.60; for refinishing a coffee table, for replacing a queen-sized mattress, and painting the rental unit at the end of this tenancy.

The Landlord has also requested permission to retain the Tenant's security deposit. Section 38(1) of the *Act* provides the conditions in which a Landlord may make a claim to retain the security deposit at the end of a tenancy. The *Act* gives a landlord, 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security deposit to the tenant

***Return of security deposit and pet damage deposit***

***38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of***

***(a) the date the tenancy ends, and***

***(b) the date the landlord receives the tenant's forwarding address in writing,***

***the landlord must do one of the following:***

***(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;***

***(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.***

In this case, I accept the Landlord's testimony and I find that this tenancy ended on October 12, 2019, the dated the Landlord conducted the move-out inspection and took back possession of the rental unit. In addition, I also accept the testimony of the Landlord that the Tenant provided their forwarding address to the Landlord, on October 18, 2019. Accordingly, the Landlord had until November 4, 2019, the first business day after the 15 days expired, to comply with section 38(1) of the *Act* by either repaying the

deposit in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposit.

I have reviewed the Landlord's application for this hearing, and I find that the Landlord submitted their Application for Dispute resolution to claim against the deposit on November 17, 2019, 14 days after the expiry of the statutory timeline to file for dispute resolution. I find that the Landlord breached section 38(1) of the *Act* by not filing their claim against the deposit within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the Tenant double the security deposit.

***Return of security deposit and pet damage deposit***

*38 (6) If a landlord does not comply with subsection (1), the landlord*  
*(a) may not make a claim against the security deposit or any pet*  
*damage deposit, and*  
*(b) must pay the tenant double the amount of the security*  
*deposit, pet damage deposit, or both, as applicable.*

Therefore, I find that pursuant to section 38(6) of the *Act* the Tenant is entitled to the award of double their security deposit due to the Landlord breach of the *Act*.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been partially successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

Overall, I find that the Landlord has established an entitlement to a monetary order in the amount of \$1,600.00; consisting of \$3,000.00 in outstanding rent for September and October 2019, and \$100.00 to recover the filing fee for this hearing, less \$1,500.00 in the doubled security deposit due to the Landlord late dispute resolution application.

Conclusion

I find for the Landlord under sections 67 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$1,600.00**. The Landlord is provided with this Order 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 22, 2020

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Residential Tenancy Branch