



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, FFL, MNRL-S

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on December 13, 2019 (the "Application"). The Landlord applied as follows:

- For compensation for monetary loss or other money owed;
- To recover unpaid rent;
- To keep the security deposit; and
- For reimbursement for the filing fee.

The Landlord appeared at the hearing with his son. The Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlord originally sought \$9,160.00 on the Application. The Landlord submitted an amendment dated March 16, 2020 claiming the following (the "Amendment"):

- \$200.00 for damage;
- \$10,000.00 for unpaid rent; and
- \$825.12 for compensation for monetary loss or other money owed.

The \$825.12 for compensation for monetary loss or other money owed is set out in the Monetary Order Worksheet submitted.

At the hearing, the Landlord advised that he was seeking \$2,000.00 for cabinet work completed in the rental unit. This is not set out in the Application or Amendment. Upon further discussion it was determined that this was included in the \$10,000.00 for unpaid rent.

At first, the Tenant said he did not understand the amounts the Landlord was seeking. However, upon further discussion, the Tenant confirmed he did understand from the materials what the Landlord was seeking as it was set out in the Amendment and Monetary Order Worksheet.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord's evidence and the Tenant confirmed receipt of these.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

#### Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started September 01, 2017 and was for a fixed term ending May 01, 2018. The tenancy then became a month-to-month tenancy. Rent was \$2,000.00 per month due on the first day of each month. The Tenants paid a \$1,000.00 security deposit.

The Tenant advised that the tenancy actually started September 02, 2017.

The Landlord testified that the tenancy ended December 01, 2019. The Tenant testified that the tenancy ended about a week before December 01, 2019 but that it "technically ended" December 01, 2019.

The Landlord testified that the Tenant agreed in writing at the end of the tenancy that the Landlord could keep the security deposit towards unpaid rent. The Tenant

confirmed at the hearing that the Landlord can keep the security deposit towards unpaid rent.

The parties agreed no move-in inspection was done.

The parties agreed on the following. A move-out inspection was done December 01, 2019. Both parties participated, completed the Condition Inspection Report ("CIR") and signed the CIR. The CIR was sent to the Tenants by email shortly after the inspection.

As set out above, the Landlord sought the following compensation:

Item	Description	Amount
1	Damage	\$200.00
2	Unpaid rent	\$10,000.00
	Compensation for monetary loss or other money owed:	\$825.12:
3	• Installed cabinet doors and handles	• \$425.00
4	• Door handles and lazy susan	• \$167.20
5	• Re-ordered two cabinet doors	• \$180.82
6	• Garbage to landfill	• \$52.10
	<b>TOTAL</b>	<b>\$11,025.12</b>

### **#1 Damage \$200.00**

The Landlord testified that the Tenant agreed to address some issues at move-out or pay \$200.00 if the issues were not addressed. The Landlord pointed to a written agreement in evidence.

The Tenant agreed to pay the Landlord \$200.00 for this item.

### **#2 Unpaid rent \$10,000.00**

The Landlord testified that he is seeking \$2,000.00 in unpaid rent because the parties agreed the Tenant would install kitchen cabinets in exchange for two months of rent and the Tenant did not finish installing the cabinets.

The Tenant agreed to pay the Landlord \$2,000.00 in unpaid rent because the kitchen cabinets were not completed.

The Landlord sought \$6,000.00 for unpaid rent for September, October and November of 2019.

The Tenant agreed to pay the Landlord \$6,000.00 for unpaid rent for September, October and November of 2019.

In relation to the remaining \$2,000.00 sought for unpaid rent, the Landlord testified as follows. The Tenants were required under the tenancy agreement to give 45 days notice to end the tenancy. He received notice from the Tenants November 19, 2019 ending the tenancy. The Tenant sent a text on November 19, 2019 advising that the Tenants were moving out December 01, 2019. The Tenants did move out December 01, 2019 and did not pay December rent. Further, the rental unit could not be re-rented for December because the kitchen cabinets were not complete.

The Tenant disputed that the Tenants owe a further \$2,000.00 for unpaid rent for December. The Tenant testified as follows. The Tenants gave the Landlord notice October 28, 2019 stating they would move out of the rental unit mid-November if they did not catch up on the outstanding rent. The parties spoke on November 27, 2019 and both agreed the Tenants should move out December 01, 2019. The rental unit was listed for sale one day later, on November 28, 2019. It should have been clear to the Landlord on October 28, 2019 that the tenancy might end. The tenancy was ended as of November 27, 2019.

In reply, the Landlord testified as follows. He could not re-rent the unit based on the October 28, 2019 notice because it was not proper notice ending the tenancy. It was not until November 19, 2019 that the Landlord could consider the tenancy ended and try to re-rent the unit. The rental unit was listed for sale November 28, 2019; however, he was trying to re-rent the unit at the same time. The unit was re-rented after the kitchen cabinets were finished. The kitchen cabinets were not finished until January 12, 2020.

***#3 Installed cabinet doors and handles \$425.00***

The Tenant agreed to pay the Landlord \$425.00 for this item.

***#4 Door handles and lazy susan \$167.20***

Both parties agreed the Tenant would pay the Landlord \$117.00 for this item.

**#5 Re-ordered two cabinet doors \$180.82**

The Tenant agreed to pay the Landlord \$180.82 for this item.

**#6 Garbage to landfill \$52.10**

Both parties agreed the Tenant would pay the Landlord \$20.00 for this item.

Analysis

***Security Deposit***

Under sections 24 and 36 of the *Residential Tenancy Act* (the “*Act*”), landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of both parties about the move-in and move-out inspections, I find the Tenants did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished his rights in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage to the rental unit and the Landlord has claimed for unpaid rent.

I am satisfied based on the Landlord’s testimony and written document in evidence that the Tenant did agree in writing at the end of the tenancy that the Landlord could keep the security deposit for unpaid rent. The Tenant did not dispute this. The Tenant agreed at the hearing that the Landlord could keep the security deposit towards unpaid rent. I am satisfied the Landlord was entitled to keep the security deposit towards unpaid rent pursuant to section 38(4)(a) of the *Act*.

I find section 38(1) of the *Act* does not apply as the Landlord was entitled to keep the security deposit towards unpaid rent pursuant to section 38(4)(a) of the *Act*.

## ***Compensation***

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order 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.

### ***#1 Damage \$200.00***

The Landlord is entitled to this amount because the Tenant agreed to pay this amount.

### ***#2 Unpaid rent \$10,000.00***

The Landlord is entitled to \$8,000.00 for unpaid rent because the Tenant agreed to pay this amount.

I find the following in relation to the remaining \$2,000.00 sought for unpaid rent.

I do not accept that the Tenants were required to give 45 days notice to end the tenancy. Section 45 of the *Act* states:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Pursuant to section 5 of the *Act*, parties cannot avoid or contract out of the *Act* and any attempt to do so is of no effect. Term 6 in the tenancy agreement is an attempt to contract out of section 45 of the *Act* and is of no effect.

The Tenants were required to give notice ending the tenancy in accordance with section 45 of the *Act*.

I have reviewed the October 28, 2019 letter. This is not a notice ending the tenancy. It is an agreement to pay rent. The Tenants acknowledge that failure to pay rent “will result in an eviction from the rental property”. However, a notice to end tenancy must set out that the Tenants are ending the tenancy and provide a specific date as is clear from sections 45 and 52 of the *Act*. The October 28, 2019 letter does not do this and in fact contemplates the tenancy continuing.

I agree that the Landlord could not have found from the October 28, 2019 letter that the tenancy was ending December 01, 2019. Nor could the Landlord have acted on this letter and attempted to re-rent the unit for December.

I am satisfied based on the testimony of the Landlord and text messages submitted that the Landlord received notice ending the tenancy November 19, 2020.

Section 53 of the *Act* addresses incorrect effective date and states that the effective date of a notice ending the tenancy will automatically change to comply with the relevant section of the *Act*.

Here, notice given November 19, 2020 would not be effective until December 31, 2019 as this is the date that complies with section 45(1) of the *Act*.

I am satisfied the Tenants breached section 45(1) of the *Act* by giving notice ending the tenancy that does not comply with this section.

If the Tenants had given notice ending the tenancy in compliance with section 45(1) of the *Act*, that is notice November 19, 2019 ending the tenancy December 31, 2019, the Landlord would have received December rent. I am satisfied that the Landlord lost December rent because the Tenants did not give notice ending the tenancy that complies with section 45(1) of the *Act*.

I am satisfied the Landlord lost \$2,000.00 in rent for December as there is no issue that this was the rent amount under the tenancy agreement.

I find the following in relation to the mitigation requirement. The Landlord only received notice ending the tenancy November 19, 2019 which is short notice to re-rent the unit for December. I am satisfied based on the text messages submitted that the Landlord did attempt to re-rent the unit as the text message dated November 19, 2019 refers to the Landlord listing the unit for rent. I acknowledge that the unit was also listed for sale; however, I do not find that this text message refers to the sale of the unit because it refers to finding someone for December 01, 2019 and because the Tenant testified that the unit was listed for sale November 28, 2019. I do not find the attempt to sell the unit otherwise relevant as I am satisfied the Landlord was also attempting to re-rent the unit as the Landlord testified and as shown in the text messages.

I am satisfied the Landlord is entitled to \$2,000.00 for December rent.

***#3 Installed cabinet doors and handles \$425.00***

The Landlord is entitled to this amount because the Tenant agreed to pay this amount.

***#4 Door handles and lazy susan \$167.20***

The Landlord is entitled to \$117.00 for this item because the parties agreed the Tenant would pay the Landlord this amount.

***#5 Re-ordered two cabinet doors \$180.82***

The Landlord is entitled to this amount because the Tenant agreed to pay this amount.

**#6 Garbage to landfill \$52.10**

The Landlord is entitled to \$20.00 for this item because the parties agreed the Tenant would pay the Landlord this amount.

**Filing fee**

Given the Landlord was successful in the Application, I award him reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

**Summary**

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Damage	\$200.00
2	Unpaid rent	\$10,000.00  - \$1,000.00 for the security deposit  = \$9,000.00
3	Installed cabinet doors and handles	\$425.00
4	Door handles and lazy susan	\$117.00
5	Re-ordered two cabinet doors	\$180.82
6	Garbage to landfill	\$20.00
7	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$10,042.82</b>

The Landlord is entitled to \$10,042.82 and is issued a monetary order for this amount pursuant to section 67 of the *Act*.

**Conclusion**

In total, the Landlord is entitled to \$11,042.82. The Landlord can keep the \$1,000.00 security deposit. The Landlord is issued a monetary order for the remaining \$10,042.82. This Order must be served on the Tenants. If the Tenants fail to comply with this Order, it 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 *Act*.

Dated: May 25, 2020

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Residential Tenancy Branch