



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL-S, MNDCL-S, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 31, 2020, by the Landlord under the Residential Tenancy Act, (the “*Act*”), for a monetary order for compensation for my monetary loss or other money owed, for a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, site or property, 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’s Agent and Assistant (the “Landlord”) attended the hearing and were each affirmed to be truthful in their testimony. As the Tenants 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 February 3, 2020, two Canada Post tracking numbers were 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 Tenants have 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 compensation for my monetary loss or other money owed?
- Is the Landlord entitled to monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, site or property?
- 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

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Landlord testified that the tenancy began on December 1, 2014, as a one-year fixed term tenancy that rolled into a month-to-month tenancy at the end of the initial fixed term. That by the end of this tenancy, rent in the amount of \$2,190.00 was to be paid by the first day of each month, and the Landlord had been given a \$990.00 security deposit and a \$990.00 pet damage deposit (the “deposits”) at the outset of the tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that this tenancy ended, in accordance with the Act, on November 29, 2019, and that the move-out inspection had been completed by the Landlord and the Tenants that same day. The Landlord provided a copy of the move-in/move-out inspection report (the “inspection report”) into documentary evidence.

The Landlord testified that the pet damage deposit of \$990.00 had been returned to the Tenants on December 15, 2019, but that they were still holding on the security deposit, of \$990.00, as of the date of this hearing. The Landlord submitted a copy of the electronic fund transfer for the return of the pet damage deposit into documentary evidence.

The Landlord testified that the Tenants returned the rental unit uncleaned, with damaged walls, damaged window blinds, and a missing packing access pass at the end of this tenancy. The Landlord testified that all required cleaning and damage had been recorded on the inspection report already submitted into documentary evidence. The

Landlord also submitted 133 pictures taken of the rental unit into documentary evidence.

The Landlord is requesting \$210.00 for cleaning the rental unit after the Tenants moved out, \$150.00 for carpet cleaning, \$100.00 to repair nail and screw holes in the drywall, \$672.00 to replace damaged blinds and \$105.00 to replace a building parking pass that was not returned by the tenants at the end of tenancy. The Landlord provided copies of six invoices for the cleaning a repair of the rental unit at the end of tenancy into documentary evidence.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Landlord has requested compensation to recover \$1,237.00 they paid to clean and repair the rental unit at the end of this tenancy, consisting of; \$210.00 for cleaning services, \$150.00 for carpet cleaning, \$100.00 to repair nail and screw holes in the walls, \$672.00 to replace damaged blinds and \$105.00 to replace a building parking pass that was not returned by the tenants at the end of tenancy.

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.

I accept the inspection report, completed by these parties to this tenancy, as the official condition of the rental unit at the beginning and end of this tenancy. I have reviewed the inspection report, and I find that the rental unit had been returned to the Landlord, uncleaned and damaged at the end of this tenancy. Section 37 of the *Act* stated the following:

***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.*

In this case, I find that the Tenant's breach of section 37(2) of the *Act* when they returned the rental unit to the Landlord uncleaned, damaged and miss an access pass at the end of this tenancy.

As a result of the Tenants' breach of the *Act*, I find that the Landlord's suffered a loss of \$1,237.00 in their costs to clean and repair the rental unit and replace the missing access pass at the end of this tenancy.

I have reviewed the documentary evidence submitted to these proceedings by the Landlord, and I find that Landlord has provided sufficient evidence to prove the value of their losses and that they took reasonable steps to minimize their losses due to the Tenants' breach. Therefore, I find that the Landlord has established an entitlement to the recovery of their cleaning, repair and replacement costs. I award the Landlord the recovery of their costs in the amount of \$1,237.00.

The Landlord has also requested permission to retain the Tenants' security deposit in partial satisfaction of their award. 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 November 29, 2019, the date 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 Tenants provided their forwarding address to the Landlord, on December 30, 2019. Accordingly, the Landlord had until January 14, 2020, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenants 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 January 31, 2020, 17 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 Tenants are entitled to the award of double their security deposit due to the Landlord breach of the *Act*.

Consequently, I find that the security deposit the Landlord is holding for this tenancy, as a value of \$1,980.00. I grant permission to the Landlord to withhold \$1,237.00 of the security deposit, they are holding for this tenancy, in full satisfaction of the amount awarded above.

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 successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

I order the Landlord to return \$643.00 of the security deposit they are holding for this tenancy, to the Tenants, within 15 days of the date of this decision.

I grant a conditional monetary order to the Tenants in the amount of \$643.00 for the recovery of the remained of their doubled security deposit; consisting of \$1,980.00 for the doubled security deposit, less \$100.00 in the recovery of the Landlord's filing fee for this hearing, and less \$1,237.00 awarded to the landlord in this decision.

Conclusion

I order the Landlord to return \$643.00 of the security deposits to the Tenants within 15 days of receiving this decision.

I grant a conditional **Monetary Order** to the Tenants in the amount of **\$643.00**. The Tenants are provided with this Order in the above terms, and the Landlord is to be served with this order if they do not comply as ordered above. The Landlord must be served with this Order as soon as possible. Should the Landlord 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: June 24, 2020

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Residential Tenancy Branch