



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TWENTY ONE HOLDINGS  
LTD. and [tenant name suppressed to protect  
privacy]

## **DECISION**

### **Dispute Codes**

MNRL-S, MNDCL-S, FFL

### **Introduction**

On March 3, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

G.R. and A.M. attended the hearing as agents for the Landlord and the Tenant attended the hearing as well. All in attendance provided a solemn affirmation.

G.R. advised that a Notice of Hearing package was served to the Tenant by registered mail on March 13, 2020 and the Tenant acknowledged receiving this package. G.R. also advised that he served the Landlord’s evidence to the Tenant by registered mail on June 4, 2020 and the Tenant confirmed that he received this as well. Based on this undisputed testimony, I am satisfied that the Tenant has been served the Notice of Hearing and evidence package. As such, this evidence was accepted and will be considered when rendering this Decision.

The Tenant advised that he served his evidence to the Landlord by email on June 19, 2020 and G.R. confirmed that the Landlord received this package. Based on this undisputed testimony, I am satisfied that the Landlord has been served the Tenant’s evidence package. As such, this evidence was accepted and will be considered 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

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord 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 June 1, 2019 as a fixed term tenancy for one year. However, the tenancy ended when the Tenant gave up vacant possession of the rental unit on February 28, 2020. Rent was established at \$1,500.00 per month and was due on the first day of each month. A security deposit of \$750.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

As well, all parties agreed that a move-in inspection report was conducted on May 29, 2019, that a move-out inspection report was conducted on February 28, 2020, and that the Tenant provided his forwarding address in writing on the move-out condition inspection report on February 28, 2020. The move-in and move-out inspection reports were submitted as documentary evidence.

G.R. advised that the Landlord is seeking compensation in the amount of **\$1,500.00** for March 2020 rent because the Tenant signed a fixed term tenancy ending on May 31, 2020, but he gave a notice to end his tenancy early and gave up vacant possession of the rental unit on February 28, 2020. He stated that the Tenant advised the Landlord that he was contemplating leaving the rental unit, and then decided to leave for the end of February 2020. The Landlord started posting ads online on January 2, 2020 in an attempt to re-rent the rental unit. He referenced multiple online listings that were submitted as documentary evidence to support the Landlord's position that they did their best to mitigate this loss. As well, he cited multiple texts with the Tenant, that were submitted as documentary evidence, that demonstrate that many attempts were made to show the rental unit to prospective tenants. The Landlord was able to rent the unit for April 1, 2020 and a copy of the tenancy agreement with this new Tenant was submitted as well.

The Tenant confirmed that he signed a fixed term tenancy agreement until May 31, 2020, that he ended the tenancy early, and that he paid the \$500.00 liquidated damages fee for breaking the lease. He stated that he found the rental unit on Craigslist and that the Landlord did not advertise the unit for re-rent on this site. However, when it was eventually posted on this site, the rent was increased to \$1,600.00. In addition, he stated that the Landlord did not update the sign in front of the building that would indicate that the rental unit was available. Finally, he noted that a different unit in the building was posted as available online, but the Landlord reduced the rent of that unit. It is his position that the Landlord was making more of an effort to rent the other unit, than his. He submitted documentary evidence to support his position.

A.M. stated that the Tenant's tenancy was for \$1,500.00 per month but that did not include parking and storage. She agreed that the new tenancy agreement was for \$1,600.00, but this included parking and storage. She advised that the rental unit was advertised on a different site but was then also posted on Craigslist.

G.R. and A.M. advised that the Landlord is seeking compensation in the amount of **\$210.00** for the cost of cleaning because the Tenant did not leave the rental unit in a re-rentable state at the end of the tenancy. G.R. referenced many pictures submitted as documentary evidence that demonstrated that the stove, fridge, cabinets, sink, walls, baseboards, bathroom, and kitchen were all in need of cleaning. An invoice for the cleaning company was submitted as documentary evidence and it took the cleaners three and a half hours to return the rental unit to a re-rentable condition. A.M. noted the specific areas that the cleaners noted were addressed on the invoice, and she referenced the move-out inspection report where the Tenant agreed that cleaning was required.

The Tenant agreed with the condition noted on the move-out inspection report that he signed off on.

### 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.

Pursuant to Sections 24 and 36 of the *Act*, as the Landlord conducted move-in and move-out inspection reports with the Tenant, I am satisfied that the Landlord has

complied with the *Act* and did not extinguish the right to claim against the security deposit for any damages incurred.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the evidence before me, I am satisfied that the Landlord had the Tenant's forwarding address in writing on February 28, 2020. As the tenancy ended on this date as well, I find that February 28, 2020 is the date which initiated the 15-day time limit for the Landlord to deal with the deposit. The undisputed evidence before me is that the Landlord made this Application to claim against the deposit on March 3, 2020. As the Landlord complied with the requirements of the *Act* by applying within the legislated timeframes, I am satisfied that the doubling provisions do not apply to the security deposit.

With respect to the Landlord's 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."

Furthermore, Policy Guideline # 5 outlines a Landlord's 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. In claims for loss of rental income in circumstances where the Tenant end the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

When reviewing the totality of the evidence before me, there is no dispute that the parties entered into a fixed term tenancy agreement for a year starting on June 1, 2019, yet the tenancy effectively ended when Tenant gave up vacant possession of the rental unit on February 28, 2020. Sections 44 and 45 of the *Act* set out how tenancies end and

also specifies that the Tenant must give written notice 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. Section 52 of the *Act* sets out the form and content of a notice to end a tenancy.

Given the date that the Tenant gave up vacant possession of the rental unit, I do not find that the Tenant ended the tenancy in accordance with the *Act*. Therefore, I find that the Tenant vacated the rental unit contrary to Section 45 of the *Act*. Moreover, I find that the evidence indicates that as a result of the Tenant's actions, the Landlord could have suffered a rental loss.

When reviewing the totality of the evidence before me, I am satisfied that the Landlord made sufficient attempts to re-rent the unit as quickly as possible after being notified that the Tenant would be vacating the rental unit. As the Landlord re-rented the rental unit on April 1, 2020, I am satisfied that the Tenant is responsible for the rental loss that the Landlord suffered until they were able to secure a new tenant. As such, I grant the Landlord a monetary award in the amount of **\$1,500.00** for March 2020 rent.

With respect to the Landlord's claim of \$210.00 for cleaning, as cleaning of the rental unit was undisputed and necessary, I grant the Landlord a monetary award in the amount of **\$210.00** to satisfy this claim.

As the Landlord was successful in these claims, I find that the Landlord is 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 Landlord 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**

|                             |                   |
|-----------------------------|-------------------|
| March 2020 rental loss      | \$1,500.00        |
| Cleaning                    | \$210.00          |
| Recovery of filing fee      | \$100.00          |
| Security deposit            | -\$750.00         |
| <b>TOTAL MONETARY AWARD</b> | <b>\$1,060.00</b> |

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$1,060.00** 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: July 12, 2020

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Residential Tenancy Branch