



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, MNDL-S, FFL

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for compensation for damage and loss under the Act, the Regulation or tenancy agreement pursuant to section 67 of the Act;
- authorization to retain the tenants' security deposit under Section 38 of the Act; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

I left the teleconference connection open until 2:29 P.M. to enable the tenants (respondents) to call into this teleconference hearing scheduled for 1:30 P.M. The tenants did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord (applicant), her advocate and I were the only ones who had called into this teleconference. The landlord and her advocate were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

I accept the landlord's testimony that the tenants were served with the notice of hearing, and evidence (the Materials) by registered mail on March 20, 2020, in accordance with section 89(1)(d) of the Act (the tracking numbers are recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is

mailed. Given the evidence of registered mail I find the tenants are deemed to have received the Materials on March 25, 2020.

Pursuant to Rule of Procedure 7.3 I conducted the hearing in the absence of the tenants.

### Issues to be Decided

Is the landlord entitled to:

1. retain the tenants' security deposit?
2. receive a monetary award for compensation for damages caused by the tenants?
3. an authorization to recover the filing fee for this application

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is his obligation to present the evidence to substantiate her application.

The landlord testified the periodic tenancy started on March 21, 2017 and ended on March 01, 2020. Monthly rent was \$1,256.00 due on the first day of the month. At the outset of the tenancy a security deposit of \$575.00 was collected and the landlord still holds it in trust. The tenancy agreement was submitted into evidence.

There was no move-in inspection. When the tenancy started the rental unit was undergoing renovations, which ended in June 2017. The bathroom and kitchen were fully renovated and had brand new vanities and countertops. The floor was in perfect conditions and the walls were painted.

The landlord affirmed the tenants removed the shower head and it cost him \$75.00 to replace this item. A photograph of a missing shower cap was submitted into evidence. A receipt dated March 18, 2020 for a total amount of \$3,045.00 was submitted into evidence. The landlord affirmed the service for replacing the shower head is part of the total amount of this receipt.

The new kitchen countertop was burned by the tenants and it's replacement cost \$975.00. A receipt was provided, as well as a photograph showing damages to the countertop. The landlord was not able to repair the countertop and had to replace it.

The new bathroom vanity was damaged by the tenants and it's replacement cost \$800.00. A receipt was provided. The landlord was not able to repair the vanity and had to replace it.

The laundry door was in perfect conditions when the tenancy started and the tenants damaged it. A photograph showing a door with a whole was submitted into evidence. The landlord affirmed he spent \$782.07 to replace the damaged door. The landlord was not able to repair the laundry door and had to replace it.

The floor had scratches in several areas throughout the 2-bedroom, 670 square-foot rental unit. The landlord spent \$300.00 to have the scratches removed by staining the floor. A receipt was provided, as well as a photograph showing a scratched floor.

The walls had scratches and around 15 nail holes throughout the rental unit. There was also a black substance on the walls. The landlord spent \$375.00 to repair the walls and submitted a receipt.

The landlord paid \$189.00 to have the rental unit professionally cleaned, as the tenants did not clean it when the tenancy ended. Photographs and a receipt dated March 08, 2020 were submitted into evidence.

The tenants gave a one month notice to end monthly tenancy on February 01, 2020 and moved out on March 01, 2020. The landlord could only re-rent the rental unit on April 01, 2020 because of all the repairs that had to be conducted when the tenancy ended. In February 2020 the landlord tried to inspect the rental unit but the tenants did not allow the landlord to enter the rental unit.

The landlord conducted a move-out inspection, but the tenants refused to sign it. The tenants provided the forwarding address verbally.

The landlord is claiming for:

| Item                 | Amount in \$ |
|----------------------|--------------|
| Bathroom Shower head | 75.00        |
| Kitchen countertop   | 975.00       |

|                       |                 |
|-----------------------|-----------------|
| Bathroom vanity       | 800.00          |
| Laundry door          | 782.07          |
| Scratched floor       | 300.00          |
| Walls repairs         | 375.00          |
| Cleaning              | 189.00          |
| Loss of rental income | 1,256.00        |
| Filing fee            | 100.00          |
| <b>Total</b>          | <b>4,852.07</b> |

### Analysis

Sections 7 and 67 of the Act state:

Liability for not complying with this Act or a tenancy agreement

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

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

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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. 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.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

#### Bathroom Shower head

Based on the testimony, photograph and receipt submitted into evidence, I find the tenants removed the shower head and the landlord spent \$75.00 to replace it.

As such, I award the landlord \$75.00 in compensation for this loss.

#### Kitchen countertop

Based on the testimony, photograph and receipt submitted into evidence, I find the tenants damaged the kitchen countertop and the landlord spent \$975.00 to replace it.

Thus, I award the landlord \$975.00 in compensation for this loss.

#### Bathroom vanity

Based on the testimony and receipt submitted into evidence, I find the tenants damaged the bathroom vanity and the landlord spent \$800.00 to replace it.

As such, I award the landlord \$800.00 in compensation for this loss.

#### Laundry door

Based on the testimony and photograph submitted into evidence, I find the tenants damaged the laundry door and the landlord spent \$782.07 to replace it.

Thus, I award the landlord \$782.07 in compensation for this loss.

#### Scratched floor

Residential Tenancy Branch Policy Guideline 01 states:

3.The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. **Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.**

4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

(emphasis added)

Based on the testimony, photograph and receipt submitted into evidence, I find the tenants scratched the floor throughout the rental unit. I find that \$300.00 is a reasonable amount to stain the floor of a 2-bedroom 670 square feet rental unit.

As such, I award the landlord \$300.00 in compensation for this loss.

### Walls repairs

Residential Tenancy Branch Policy Guideline 01 states:

Cleaning: The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping.

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used.

If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

3. The tenant is responsible for all deliberate or negligent damage to the walls.

Based on the testimony I find the landlord did not prove, on a balance of probabilities, the tenants caused damages to the walls. I also find that 15 nail holes is not an excessive number for a 2-bedroom 670 square feet rental unit which was rented for three years. Thus, I dismiss the application for compensation for walls repairs.

### Cleaning

Section 37(2) of the Act states:

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

Residential Tenancy Branch Policy Guideline 1 states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

Based on the testimony, photographs and receipt, I find the tenants did not clean the rental unit at the end of the tenancy. I find that \$189.00 is a reasonable amount to clean the rental unit.

As such, I award the landlord \$189.00 in compensation for this loss.

#### Loss of rental income

Based on the landlord's undisputed testimony, I find that due to the damages caused by the tenants to the rental unit the landlord incurred a loss of rent income for the month of March 2020 (\$1,256.00).

Residential Tenancy Branch Policy Guideline 3 sets conditions for loss of rental income claims. It states:

Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

Further to that, Policy Guideline 5 states:

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
2. re-rent the unit as soon as possible.

For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. **Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.**

If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied.

**(emphasis added)**

I find the several repairs the landlord had to conduct and the tenants' prohibition of a rental unit inspection in February 2020 are valid reasons to grant loss of income from March 01, 2020 to March 18, 2020, as the two receipts submitted by the landlord are dated March 08 and 18, 2020. The landlord did not explain why the rental unit could not be rented from March 19, 2020 to April 01, 2020.

In accordance with section 67 of the Act, I find the tenants are responsible for the loss of income from March 01 to March 18, 2020. As such, I order the tenants to pay the landlord \$753.66 ( $1,256.00/30=41.87*18$ ) for loss of rental income.

Filing fee and set-off

As the landlord was successful in this application, the landlord is entitled to recover the \$100.0 filing fee.

Residential Tenancy Branch Policy Guideline 17 sets guidance for a set-off when the landlord holds the security deposit:

2. The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

As such, the landlord is authorized to retain the \$575.00 security deposit to offset the monetary award for losses incurred due to the tenants' non-compliance with the Act.

In summary:

| Item                 | Amount \$ |
|----------------------|-----------|
| Bathroom Shower head | 75.00     |
| Kitchen countertop   | 975.00    |
| Bathroom vanity      | 800       |
| Laundry door         | 782.07    |



|                             |                   |
|-----------------------------|-------------------|
| Scratched Floor             | 300.00            |
| Cleaning                    | 189.00            |
| Loss of rental income       | 753.66            |
| Filing fee                  | 100.00            |
| Subtotal                    | \$3,974.73        |
| Minus security deposit      | -\$575.00         |
| <b>Total monetary award</b> | <b>\$3,399.73</b> |

### Conclusion

Pursuant to section 38 of the Act, I authorize the landlord to retain the tenants' security deposit of \$575.00 in partial satisfaction of losses incurred and grant the landlord a monetary order pursuant to sections 67 and 72 in the amount of \$3,399.73.

The landlord is provided with this order in the above terms and the tenants must be served with this order as soon as possible. Should the tenants 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 21, 2020

---

Residential Tenancy Branch