



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCL-S, MNDL-S, FFL**

### Introduction

This hearing addressed the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for damage to the unit, site or property, pursuant to section 67 of the *Act*;
- an application to keep all or part of the security and pet deposits, pursuant to section 72 of the *Act*; and
- a request to be reimbursed by the tenants for the filing fee, pursuant to section 72 of the *Act*.

The landlord's agent, M.B attended the hearing by way of conference call, while tenant, R.K., her advocate Y.B and their two witnesses T.L & C.D. attended the hearing in person. All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Both the landlord and the tenant confirmed receipt of each others evidentiary packages and the tenant confirmed receipt of the landlord's application for dispute. I find that all parties were sufficiently served with all documents in accordance with sections 88 & 89 of the *Act*.

Following opening remarks, the landlord's agent sought to amend the landlord's application for a monetary award from \$14,522.00 to \$10,996.74. As the tenants would not be unfairly prejudiced by this lower amount, I allow the amendment pursuant to section 64(3)(c) of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord retain the tenants' pet and security deposit?

Can the landlord recover the filing fee?

### Background and Evidence

This tenancy began on June 1, 2019. It was a fixed-term tenancy that was set to expire on May 31, 2021. Rent was \$2,850.00 per month and two deposits (pet and security) of \$1,425.00 each were collected. All parties agreed that this tenancy ended on February 29, 2020 when tenant R.K. vacated the property. An end of tenancy condition inspection report was completed on this day by the landlord and tenant.

The landlord is seeking a monetary award of \$10,996.74 representing unpaid rent, alleged damages, repairs and cleaning of the unit, rekeying of the rental unit's locks and an unpaid water bill. Additionally, the landlord sought to enforce the liquidated damages clause.

The landlord's agent explained that the tenant had broken a fixed-term tenancy when she vacated the property at the end of February 2020 rather than the contractually agreed upon May 31, 2021 date. The landlord's agent said that no renters for the unit could be found until April 2020 for a May 2020 move-in.

The landlord's agent described the attempts made to re-rent the suite. These included advertising the unit on a local property website along with posting it on the corporate agency's property website. The landlord's agent said these were steps she regularly took when re-renting a unit. The landlord explained that the unit was shown on three occasions on February 19, 2020, while it was shown again in March 2020 on two occasions. Originally advertised for \$2,950.00 per month in February 2020, the rent was reduced to \$2,850.00 per month in March 2020 as the landlord attempted to garner more interest in the unit. Ultimately, the unit was re-rented for \$2,600.00 per month in April 2020.

A large portion of the landlord's monetary application concerned unpaid rent for March and April 2020 (\$2,850.00 x 2) along with the difference in rental income of \$250.00 per month for May through December 2020 and January through May 2021. Further, and as noted previously, the landlord sought enforcement of the liquidated damages clause agreed to by the tenants. A review of the tenancy agreement signed by the parties reveals the following section:

#### (e) LIQUIDATED DAMAGES

If the tenant terminates the tenancy before the date specified, then the landlord shall charge and the tenant agrees to pay the sum equal to **TWO MONTHS RENT**. Liquidated damages and such sum may be deducted from the security deposit or otherwise collected. Such payment shall

release the tenant from liability to pay rent for the balance of the term of this agreement.

While the landlord acknowledged that significant efforts had been made to clean and tidy the rental unit following the conclusion of the tenancy, the landlord sought some compensation related to expenses incurred for carpet cleaning, painting, minor repairs and rekeying of the locks. The landlord said that following the conclusion of the tenancy the locks of the property were changed because the boyfriend of the former tenant A.K. represented a danger to the property. The landlord stated that the repairs and touch-ups required in the rental unit were confined to the basement area of the home where A.K. and her boyfriend resided. When asked to detail exactly what repairs and cleaning were required the landlord listed the following:

- behind fridge (cleaning)
- light bulb replacement
- stove filter (cleaning)
- front doorstep
- light fixture (cleaning)
- pantry (cleaning – not swept)
- patio door (cleaning – fingerprints)

Further to the above listed items some touch-up painting was needed. The landlord said the unit was last painted approximately three years prior to the start of the tenancy. The final portion of the landlord's application concerned an unpaid water bill of \$50.00 which was sent to the landlord following the conclusion of the tenancy. A job estimate dated March 5, 2020 provided by the landlord in evidence noted "labour and materials to sand patched areas and paint out walls as per walk through, replace damaged blinds in basement windows and fill holes in ceiling and touch up in basement bedroom."

The tenant did not dispute that she broke a fixed-term lease with the landlord, however, she cited section 45.1 of the *Act* as reasonable justification for doing so. This section states:

*A tenant is eligible to end a fixed term tenancy under this section if a statement is made in accordance with section 45.2 [confirmation of eligibility] confirming if the tenant remains in the rental unit, the safety or security of the tenant who lives in the rental unit is or is likely at risk from family violence carried out by a family member of the tenant.*

This section must be read in conjunction with sections 45.1(3) & (4) which state:

*A tenant under this section may end a fixed term 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.*

*(4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].*

The tenant acknowledged failing to fulfil the requirements of section 45.1(4) of the *Act* but provided a letter from the local RCMP victim services unit who noted a referral was received on February 6, 2020, along with a second letter from a women's support coordinator with a local non-profit which noted a meeting on January 22, 2020 concerning "guidance on how to handle a living arrangement that she stated had become toxic."

In support of her past experiences, the tenant called witness C.D. who read a detailed prepared statement concerning the abuse and violence he had witnessed. Further, the tenant herself testified how her relationship with co-tenant A.K. had deteriorated to the point of needing police intervention. The tenant explained that A.K. and her boyfriend who were previously occupying the basement of the home, had abandoned the rental unit, leaving tenant R.K. to pay rent on the property herself.

The tenant conceded that the basement area of the unit which was occupied by A.K. and her boyfriend had been very dirty when the landlord first arrived to the property to conduct showings on February 19, 2020; however, the tenant detailed the steps she took to address the property's needs. Specifically, she cited; hiring a contractor to perform repairs to the basement area, hiring a professional cleaner and contracting a commercial sized garbage bin that allowed her to "dump" many of the items left by A.K. and her boyfriend. Additionally, the tenant explained many objects were donated to the Boys and Girls Club and she said efforts were made to re-paint the suite using the paint left in the home by the landlord. The tenant called her repairman T.L. as a witness. T.L. detailed the work he undertook saying, "the house was left in original condition" and

noted he did “touch-ups” while also assisting with “general clean-up, the removal of items and dumping things in the bin.”

The tenant testified that she had indicated on the condition inspection report at the start of the tenancy that some items in the home required additional cleaning and was granted a \$40.00 rent credit on her first month’s rent. A review of this move-in portion of this document notes; “top of fridge dusty,” “paint patches by door,” “railing/bannister dusty,” “stain under sink,” “cracked & chipped 2 ensuite patched.” When asked about these flaws in the rental unit the landlord explained the suite had last been painted approximately three years ago and did not dispute that some cleaning and repairs had been done by the tenant at the end of the tenancy, however, the work done was not to a standard considered acceptable.

Finally, the tenant disputed the portion of the landlord’s application concerning the rekeying of the rental unit. The tenant said this was done after she was no longer in possession of the property. The landlord acknowledged this work was done following the tenant’s departure, but she noted A.K.’s boyfriend constituted an ongoing threat to the property and to any future occupants. The landlord noted tenant R.K. had warned that A.K.’s boyfriend may return to the premises.

In addition to the monetary award as described above, the landlord has applied to retain the tenant’s pet and security deposit along with a return of the filing fee. The landlord said the deposits currently held in trust could be used to offset some of the monetary order for which they have applied. A condition inspection report of the property was completed on February 29, 2020 with tenant R.K. providing her forwarding address on the form. The landlord applied for dispute resolution on March 6, 2020.

### Analysis

I will begin by analysing the portion of the landlord’s application as it relates to unpaid rent, future rents owing and enforcement of the liquidated damages clause of \$5,700.00. The landlord is seeking unpaid rent for March and April 2020 (\$2,850.00 x 2) along with \$250.00 per month for May through December 2020 and \$250.00 per month for January through May 2021. The landlord explained this \$250.00 was the difference in rental prices previously and currently received.

The tenant sought to exercise her right under section 45.1(2) as reason why she should be entitled to end the fixed-term tenancy. This issue is examined in detail by *Policy Guideline #30*. It states as follows:

Under section 45.1 of the Residential Tenancy Act, a tenant **may give one month's notice to end a fixed-term tenancy early without financial penalty** when fleeing family or household violence or when the tenant has been assessed as requiring long-term care or has been accepted into a long-term care facility. The notice must be accompanied by a confirmation statement that is completed by a person who is eligible to do so under the Residential Tenancy Regulation.

This *Policy Guideline* must be read in conjunction with section 45.1(2) that notes, "A tenant is eligible to end a fixed term tenancy under this section if a statement is made in accordance with section 45.2 [*confirmation of eligibility*] confirming if the tenant remains in the rental unit, the safety or security of the tenant who lives in the rental unit is or is likely at risk from family violence carried out by a family member of the tenant."

While section 45.1(4) says the Notice to End Tenancy must be given in a form that is consistent with section 52 [form and content] of the *Act*.

After considering the testimony of the tenant, her witness C.D. and having reviewed the letters produced from Victim Services along with another women's organization, I find that the tenant has adequately met the requirements excusing her from the fixed-term tenancy agreement as detailed in section 45.1(2) of the *Act* and is therefore excused from paying any future rent or the liquidated damages clause.

While the tenant did not meet the form and content provisions of section 45.1(4), and did not provide one month's notice per section 45.1(3), I find that she met the definition of "household" violence as defined in section 45.1(1), she adequately informed the landlord of her intention to vacate the property at the earliest possible opportunity and took reasonable steps to ensure the property was ready for occupation following her departure on February 29, 2020. Pursuant to section 53(1) of the *Act*, I find the tenancy ended on March 31, 2020 not at move-out as she failed to fulfil the provisions of 45.1(3). I therefore allow the landlord to collect unpaid rent for March 2020.

Section 62(2) of the *Act* allows me to "make any finding of fact or law that is necessary to making a decision under this *Act*." Pursuant to section 62(2) I find the landlord is prevented from holding the tenant liable for any other loss of rent, for future rent or from enforcing the liquidated damages clause as outlined above and as contemplated by *Policy Guideline* #30. I find the tenant faced a real risk of family violence and I find the tenant reliably documented this danger with a 3<sup>rd</sup> party, thereby satisfying the requirements to end a fixed-term tenancy without financial penalty.

I now turn my attention to the remainder of the landlord's application. The landlord is seeking compensation for carpet and general cleaning, lock rekeying and a water bill. I find little evidence that the water bill was paid following the tenant's departure and award the landlord the \$50.00 sought for this outstanding account.

Similarly, I refer to *Policy Guideline #1* which states, "Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpet after a tenancy of one year." Reviewing the tenant's evidence package I find no evidence that the carpets were steam cleaned or shampooed and therefore award the landlord the \$189.00 sought for carpet cleaning.

A significant amount of evidence was presented by both parties concerning general cleaning, painting and repairs. Both parties presented conflicting evidence regarding the scope of repairs and cleaning that were required in the unit following the tenant's departure. Section 37(2)(a) of the *Act* states, "When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." While *Policy Guideline #1* says:

The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit. 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 for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

After reviewing the photographs submitted by the tenant and having considered the testimony of the landlord and tenant, along with that of the repairman T.L., I find the tenant has met the standard of "reasonable cleanliness" and therefore decline to award any amount related to cleaning. I accept the landlord's testimony that some patching of the walls and repairs to the blinds were required in the premises following the tenant's departure, however, I decline to award any amount related to painting of the unit as I find the paint was nearing the end of its useful life as set out in *Policy Guideline #40* of four years. I therefore award the landlord \$1,011.25 (2/3rds) of the \$1,516.87 sought for maintenance repairs.

The final portion of the landlord's claim related to rekeying of the unit following the tenant's departure. While I accept the landlord had reasonable justification for taking such steps, I find no reason why the tenant should bear the cost of this expense. Section 25 of the *Act* compels a landlord to rekey a lock at the start of a new tenancy should a tenant request it, furthermore, the tenant returned all keys she had in her

possession and cannot be held liable for the actions of a party following the conclusion of the tenancy as it relates to the rental unit. For these reasons, I dismiss this portion of the landlord's application.

As the landlord was partially successful in their application, they may recover the \$100.00 filing fee. Using the offsetting provisions contained in section 72 of the *Act* I allow the landlord to retain the tenant's pet and security deposit in partial satisfaction of the monetary order granted.

### Conclusion

I issue a Monetary Order of \$1,350.25 in favour of the landlord as follows:

Item	Amount
Unpaid rent for March 2020	\$2,850.00
Repairs to unit	1,011.25
Unpaid water bill	50.00
Carpet Cleaning	189.00
Return of Filing Fee	100.00
Less Return of Security and Pet Deposits	(-2,850.00)
<b>Total =</b>	<b>\$1,350.25</b>

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: August 28, 2020

---

Residential Tenancy Branch