



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL, MNRL, MNDL, FFL

### Introduction

The landlord filed an application for Dispute Resolution (the “Application”) on April 30, 2020 seeking an order to recover monetary loss for unpaid rent, damages, and compensation for other money owed by the tenant. Additionally, they applied for the cost of the hearing filing fee.

The matter proceeded by way of a hearing on August 17, 2020 pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the hearing; the tenant did not attend. The tenant did not submit or serve documents as evidence for this hearing.

In the hearing, the landlord confirmed they delivered notice of this hearing to the tenant on May 2, 2020. The option at the time of their Application was to service this information via email. They verified the tenant’s email address was one that they had used for communication with the tenant “for quite some time.” They separate all information into 4 separate email messages – this included all their prepared evidence.

In consideration of the evidence presented by the landlord, and with consideration to section 89 of the *Act*, I find the tenant was sufficiently served with notice of this hearing, as well as the landlord’s evidence.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to a monetary order for damages pursuant to section 67 of the *Act*?

Is the landlord entitled to a monetary order for compensation for other money owed pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

### Background and Evidence

The landlord submitted a copy of the tenancy agreement for this hearing and spoke to its terms. Both the landlord and tenant signed this agreement on December 3, 2016. The tenancy started on December 1, 2016. The monthly rent was \$1,600.00 per month; this increased to \$1,768.00 by the end of the tenancy. The tenant paid a security deposit of \$800.00. The cost of “utilities, heat/hydro” was not included in the monthly rent amount.

The tenancy ended on January 28, 2020, after the landlord obtained an order of possession for the rental unit. The arranged date with the tenant was for January 24. Based on dialogue with the property manager, the landlord discovered that the tenant “disappeared” on the 28<sup>th</sup>. They left possessions behind in the unit, then made contact via email to say that these were items that could be donated.

The reason for the landlord ending the tenancy was for the tenant’s repeated late payments of rent. In a written statement the landlord provided the 3-year history of their affairs with the tenant. The tenant was not present for a move-in meeting at the start of the tenancy; nor did they contact the representative of the landlord on move out for a final meeting.

The landlord claims for reimbursement of one-half of the February amount of rent for \$884.00. They were “unable to rent suite in February.” This was “due to the extended delay of tenancy turnover, because of the extensive clean up required.”

The landlord prepared a ‘Monetary Order Worksheet’ and signed that document on April 30, 2020. The landlord made a monetary claim as follows:

	for	\$ amt
1.	outstanding electricity bill	90.35

2.	electricity reconnection fee	35.00
3.	replacement of cat-damaged carpet	1,485.99
4.	clearing house of garbage	1,280.00
5.	professional cleaning	640.00
	<b>TOTAL</b>	<b>3,531.34</b>

These listed amounts added to the rent claim of \$884.00 brings the total of their claim to \$4,415.34. They stated they are holding the original security deposit of \$800.00 and wish to apply the security deposit to this outstanding amount.

The landlord provided copies of receipts for Items 1 and 2 above.

They provided photos showing a cat-damaged carpet that required replacement, and a receipt dated March 24, 2020 showing carpet, placement materials and labour for the amount claimed.

They also provided photos that show the state of the unit when they were able to inspect after the tenant's move out. There is an extreme amount of debris and personal belongings shown in the photos. A receipt for garbage removal shows a total of 42 crew hours, multiple truckloads for removal, the truck rental rate and dump fees. For cleaning, the provider on the receipt stated that it "exceeds expectation of normal wear and tear." The cleaning receipt also shows three full days' work totalling 24.5 hours, and the cost of supplies.

The tenant did not attend the hearing and did not provide documentary evidence prior to the hearing date.

### Analysis

From the testimony of the landlord I am satisfied that a tenancy agreement was in place. The landlord provided the specific term of the rental amount. The tenant did not attend the hearing; therefore, there is no evidence before me to show otherwise.

I accept the evidence before me – primarily photos – that the tenant left the unit in a state that required a significant amount of labour, clean-up, and materials. Additionally, the state of the unit required significant time and effort from the landlord to attempt to communicate with the tenant for ongoing issues. I find the unit was not in its re-rentable state by mid-February, and so award the amount of \$884.00 as loss of rent income.

This loss would not have occurred but for the tenant's breach of the tenancy agreement. Additionally, the damages requiring a reworking of the unit by the landlord left them unable to rent the unit for the following month. This amount of compensation to the landlord is in line with the principle of awards "sufficient to put the landlord in the same position as if the tenant had not breached the agreement." This amount is with due regard to the landlord's ability to minimize their loss by repairing the unit in a timely manner and re-renting the unit shortly thereafter.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The *Act* section 37(2)(a) provides that when vacating a unit, the tenant must "leave the rental unit reasonably clean." Also, the tenant must give the keys to the landlord and allow access to the rental unit.

I find the landlord's itemized list of costs accurate and verified by the evidence they provided. The costs incurred by the landlord are established in the evidence they present. I give substantial weight to their testimony in the hearing, the evidence in the form of receipts, and photos. I find the landlord attending to the clean-up of the unit and turning their mind to an imminent re-rental of the unit shows important steps taken to minimize their loss.

The above table completes the total amount for \$4,415.34. This amount represents damages and loss that deserve recompense to the landlord because they stem from the tenant breaching the tenancy agreement. They are significant costs borne and paid for by the landlord. This is the result of the tenant breaching section 37(2)(a) of the *Act*. The landlord shall receive this amount for compensation.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$4,415.34. After setting off the \$800.00 security deposit, there is a balance of \$3,615.34. I am authorizing the landlord to keep the security deposit amount and award the balance of \$3,615.34 as compensation to them.

Because they are successful in their application, I grant the \$100.00 cost of the filing fee to the landlord.

### Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$3,715.34. The landlord is provided with this Order 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 *Act*.

Dated: September 3, 2020

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Residential Tenancy Branch