



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking a monetary order for damage to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; a monetary order for unpaid rent or utilities; an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application

One of the landlords and the tenant attended the hearing, and the landlord was accompanied by another agent of the landlord, who observed only and did not take part in the hearing. The landlord and the tenant each gave affirmed testimony, and the parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, however I advised the parties that some of the tenant's evidentiary material is in an ".eml" format, and I am not able to view it. All other evidence of the parties has been reviewed and is considered in this Decision.

### Issues to be Decided

- Have the landlords established a monetary claim as against the tenant for damage to the rental unit or property?
- Have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for liquidated damages and loss of rental revenue?
- Have the landlords established a monetary claim as against the tenant for unpaid rent?

- Should the landlords be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claims?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on May 15, 2019 and was to revert to a month-to-month tenancy after May 14, 2022, but the landlord is not certain when the tenant vacated the rental unit. Rent in the amount of \$3,500.00 was payable on the 1st day of each month, and the landlord collected a pro-rated amount for the first month of the tenancy. On May 6, 2019 the landlords collected a security deposit from the tenant in the amount of \$1,750.00 as well as a pet damage deposit in the amount of \$1,750.00, both of which are still held by the landlords. The rental unit is a condominium apartment and a copy of the tenancy agreement has been provided for this hearing.

The tenant gave notice to end the tenancy on June 1, 2020 by email, a copy of which has been provided for this hearing, and is effective June 30, 2020. The landlords started to advertise the rental unit for rent at \$3,500.00 per month on June 1, 2020 as soon as they received the tenant's notice. It was advertised on the landlord's website, Craigslist, Instagram and Facebook for the full amount of rent. On June 23, 2020 the landlords re-advertised for a lower amount of \$3,395.00 available July 1, 2020, and were successful in obtaining a new tenant for August 15, 2020 for that amount. A copy of the latter advertisement has been provided for this hearing.

The landlords claim \$5,250.00 for unpaid rent from July 1 to August 14, 2020 when the new tenant moved in.

The landlords also claim the differential between the amount the tenant had agreed to pay the amount a new tenant pays, which is \$105.00 per month for 21 months from August 15, 2020 to May 14, 2022.

Move-in and a move-out condition inspection reports were completed by the parties, and copies have been provided for this hearing. The landlord testified that at the time of the move-out condition inspection, there was a large patchy area in the living room next to the fireplace. Photographs have been provided from right before the tenancy began and on July 8, 2020 shortly after the tenant left, however the landlord does not know when the rental unit was last painted. Two painting Invoices have been provided for repair to the living room wall and 4 other walls, in the amount of \$262.50 each. The landlord testified that there were way too many holes that needed to be patched at the end of the tenancy.

The tenancy agreement also contains a liquidated damages clause that states: "5. LIQUIDATED DAMAGES. If the tenant breaches a material term of this Agreement that

causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of \$3,500 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated.” The landlord described it as a marketing fee, and testified that there is no way to determine the exact amount at the beginning of the tenancy. The landlords claim half a month of the new rent payable by the new tenant, or \$1,782.38 which includes GST. The cost to the owner for a property manager to re-rent is half of the monthly rent and GST.

The landlords have provided a monetary order worksheet setting out the following claims, which total \$9,762.38:

- \$5,250.00 unpaid rent, July 1, 2020 to August 14, 2020 at \$3,500.00 per month;
- \$262.50 Repair of the living room wall;
- \$262.50 for painting other 4 walls;
- \$2,205.00 for re-renting at a lower rate; and
- \$1,782.38 liquidated damages.

The tenant has not served the landlord with an Application for Dispute Resolution claiming the security deposit or pet damage deposit. The landlord received the tenant’s forwarding address in writing in the email giving notice to end the tenancy dated June 1, 2020 and again on the move-out condition inspection report dated July 8, 2020.

The landlord also testified that damage had occurred in the rental unit from a leak from a dryer vent into a bedroom but nowhere else. The landlord does not recall when it was repaired. The strata got ahold of the dryer company who cleaned the dryer vent and stopped the leak. The repair to the wall wasn’t completed until after the tenant moved out, but the landlord does not recall communicating that to the tenant. The landlord doesn’t remember if the tenant asked for the repair to be completed, and since the tenant was still living there, the landlord thought it best to leave it as it was.

**The tenant** testified that the neighbourhood had changed during the tenancy. A local park was closed and many homeless people moved into the area and started sleeping in all alcoves, doing drugs, fighting and screaming at all hours of the night. Almost every evening tents would be erected and usually taken down in the morning with police assistance. The tenant and her children saw a man pass away, and on another occasion the tenant was followed by a man. The tenant’s children reside part time with the tenant,

and both of the tenant's children, ages 15 and 9 refused to leave the apartment. It was very scary. Further, the tenant has mental issues and the living arrangement had an affect on the tenant's abilities and her kids' health. Letters from the tenant's physicians have been provided as evidence for this hearing.

The tenant further testified that it is unfair for the landlord to expect the tenant and kids to live in an atmosphere where they are almost captive; it's unconscionable. The tenant has a right to a peaceful place to live, including quiet enjoyment, and that is not what was provided. The landlord offered to reduce rent, but that did not solve the issue. Numerous emails exchanged between the parties have been provided for this hearing, and the tenant testified that she tried to communicate with the landlord as soon as her mental health allowed. Emails started probably in mid-May, starting when the tenant witnessed a man pass away, and she emailed the landlord about it on May 12, 2020, asking if the tenant could give 6 weeks notice to move out and asked for a reply. The tenant followed up with an email on May 19, and 2 days later the landlord's agent responded suggesting a sub-lease or temporary reduction of rent.

The tenant advertised for a sub-tenant on Craigslist on May 25, 2020 and on Kijiji on May 27, 2020, as well as on Facebook, and received a reply on June 5. The tenant testified that 7 different potential tenants were forwarded to the landlord's agent or another agent of the landlord. The landlord also asked the tenant to leave for showings.

The tenant advised the landlord that the rental unit would be vacant by June 22, 2020.

The landlord disputes that the neighbourhood had changed.

### Analysis

Firstly, with respect to the landlord's claim for painting, the landlord has no information about when the rental unit was last painted. I have reviewed the move-in and move-out condition inspection reports, and there were issues prior to this tenancy. The landlord's agent testified that there were too many holes that needed to be patched. I refer to Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements, which puts the useful life of interior paint at 4 years. In this case, considering the inspection reports and the photographs, I find that the landlord has not established that the rental unit wasn't already in need of painting in any event, and I dismiss the landlords' painting claims.

The landlord testified that the tenant's notice to end the tenancy was effective June 30, 2020, and rent was paid to that day. The rental unit was re-rented for August 15, 2020 at a lower amount, and the landlord claims the full amount of rent from July 1 to August 14, 2020 at \$3,500.00 per month, for a total of \$5,250.00. The landlord also claims the

differential from the amount of rent the tenant was paying and the amount that the rental unit was re-rented for, and testified that the difference is \$105.00 per month for 21 months remaining in the lease, from August 15, 2020 to May 14, 2022. In order to be successful, the landlord bears the burden of proving mitigation. The landlord testified that the rental unit was advertised commencing June 1, 2020 but has not provided any evidence to support that testimony, but did provide a copy of the later advertisement for the lower amount of rent. I find that the landlord has failed to prove mitigation and the landlord's claims cannot succeed.

However, a tenant is required to give one month's notice before ending a tenancy, even in a month-to-month contract. In this case, the tenant did not do so. The tenant gave notice to end the tenancy on June 1, 2020 by email which was effective June 30, 2020. The law specifies that any notice to end the tenancy must be given before the date rent is payable, which in this case is the 1<sup>st</sup> of the month. Therefore, any notice that the tenant might give in that situation would be effective at the end of the month following, or July 31, 2020. I find that the landlord is entitled to rent for the month of July, 2020, or **\$3,500.00**.

The landlord also claims liquidated damages in the amount of \$1,782.38, yet the tenancy agreement specifies \$3,500.00. A liquidated damages clause in a tenancy agreement is a pre-determined estimate of the costs that a landlord might incur if the tenant ends the tenancy early. In this case, I am satisfied that the liquidated damages clause is not a penalty or an unreasonable amount considering the length of the fixed term. The landlords claim less than specified in the tenancy agreement, and I find that the landlords have established the amount claimed, or **\$1,782.38**.

The *Residential Tenancy Act* also requires a landlord to return a security deposit or pet damage deposit, or both to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing or must make an application for dispute resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount. The *Act* also specifies that a landlord may only seek to keep a pet damage deposit for damage caused by a pet. In this case, there is no evidence to suggest that any damage claimed by the landlords was caused by a pet. The landlords have made no such claim. The tenancy ended on June 30, 2020 and the landlord received the tenant's forwarding address in writing on June 1, 2020 but did not return the pet damage deposit, and I find that the tenant is entitled to the benefit of double the amount, or \$3,500.00.

Since the landlords have been partially successful with the application, the landlords are also entitled to recovery of the **\$100.00** filing fee.

Having found that the landlords are owed \$3,500.00 for one month's rent and \$1,782.38 for liquidated damages and \$100.00 as recovery of the filing fee ( $\$3,500.00 + \$1,782.38 + \$100.00 = \$5,382.38$ ), and having found that the tenant is entitled to the benefit of \$3,500.00 as double the amount of the pet damage deposit, I order the landlord to keep the \$1,750.00 security deposit, and I grant a monetary order in favour of the landlord for the difference of \$132.38 ( $\$5,382.38 - \$3,500.00 = \$1,882.38 - \$1,750.00$  security deposit = \$132.38).

### Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$1,750.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$132.38.

This order is final and binding and may be enforced.

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: October 30, 2020

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Residential Tenancy Branch