



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, MNDCL, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, for compensation for monetary loss or other money owed, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

The landlord appeared, and the tenant’s agents appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The tenant’s agents confirmed they received the landlord’s evidence. The tenant’s agent submitted they uploaded a video to the Dispute Access site; however, they did not provide a copy to the landlord.

I have reviewed the Residential Tenancy Branch records, it does not show a video recording being uploaded. Further, even if it was uploaded, I would have to exclude the video as it was not given to the other party.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Preliminary and procedural matter

In this case the landlord did not file a monetary worksheet; however, the total amount claimed in their application is \$1,000.00. At the hearing, I had the landlord provided an explanation on their claim, as it is unclear. As an example, the landlord claims of

unpaid rent; however, under that portion of their application they are referring to damages.

The landlord stated the amount they are claiming for damages to rental unit is the amount of \$450.00. This is for carpet damage, scratches to the wall, and damage lawn due to a firepit.

The landlord further clarified that they are claiming another \$450.00 for other money owed. I have reviewed this portion of the landlord's written application and it is unclear what they are seeking. The only amount listed is the amount of \$459.10 for repayment of the WIFI service, which exceeded the amount claimed. No other amounts were listed.

I find the landlord did not comply with section 59 of the Act, as a party has the right to know and understand the full claim against them. Therefore, I will only consider the landlord's claim for WIFI. The balance is dismissed without leave to reapply.

#### Issues to be Decided

Is the landlord entitled to a monetary order for compensation for money owed ?  
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

#### Background and Evidence

The parties agreed that the tenancy began on May 1, 2019. Rent in the amount of \$900.00 was payable on the first of each month. The tenant paid a security deposit of \$450.00. The tenancy ended on July 4, 2020.

No move-in and move-out condition inspection report were filed in evidence.

#### Damages to rental unit

The landlord testified that the tenant caused damage to the carpet as there were some cigarette burns. The landlord stated they do not think the burn marks can be repaired. The landlord stated that they will probably have to replace the carpet which was some where between 20 and 40 years old. The landlord stated they do not know the cost.

The landlord testified that the tenant also damaged an area rug. The landlord stated that they paid about \$120.00 for the rug 4 or 5 years earlier.

The landlord testified that there were scratches on the walls that have to be repaired and painted. The landlord stated they do not know the cost of the repair. The landlord stated it was probably 20 years since the rental unit was painted.

The landlord testified that the tenant had a firepit outside that burnt the grass. The landlord stated that they do not know how much the repair to the grass would cost. The landlord then changed their testimony and stated it would cost around a \$100.00 for grass repair.

The landlord testified that WIFI was not included in the rent. The landlord stated that the tenant stopped paying for the WIFI in September 2019. The landlord stated that they should be entitled to the cost of \$45.91 per month for the 10 months.

The tenants' agent disagree with any damages. The agents stated that the tenant never agreed to pay the landlord for WIFI.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

### **Leaving the rental unit at the end of a tenancy**

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

I am not satisfied that the landlord had met the burden of proof, regarding damages to the rental unit. The landlord provided no evidence of the condition of the carpets or the walls at the start of the tenancy, such as a move-in condition inspection report.

Even if damage was caused by the tenant, which I am not satisfied, I find the landlord has not proven the value of the loss, no receipts or estimates were provided for my review and consideration.

Further, the carpets were between 20 and 40 years old. Under the Residential Tenancy Policy Guideline #40 (PG 40) - Use Life of Building Elements, determines carpet has a useful life of ten years. I find the useful life of the carpets had expired and the landlord has not suffered a loss. The rental unit has not been painted in 20 years. Under PG 40 paint has a useful life of 4 years. I find the paint had exceed their useful life span and the landlord has not suffered a loss.

I am further not satisfied that the landlord has provided a true estimate for repair regarding the grass. The landlord was simply guessing at the hearing to an amount. Further, I find \$100.00 excessive as this is a very small area of grass.

Based on the above, I dismiss the landlord's claim to recover the cost for damages to the rental unit.

In this case, the landlord is claiming the cost of WIFI, which they had in their own name. However, WIFI was not included in the rent and there was no written agreement that the tenant agreed to pay for this service. I find the landlord should have just simply cancelled their account in September 2019, if this was an issue. I find it unreasonable that the landlord just continue to pay for a service that was not agreed upon. Therefore, I dismiss this portion of the landlord's claim.

Based on the above, I dismiss the landlord's claim without leave to reapply. The landlord is not entitled to recover the cost of the filing fee.

As the landlord has no authority to continue to retain the security deposit. I order the landlord that they must return to the tenant their security deposit of \$450.00 forthwith. Should the landlord fail to return the security deposit, I grant the tenant a monetary order. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

### Conclusion

The landlord's application is dismissed. The landlord must return to the tenant their security deposit forthwith. I grant the tenant a monetary order for the return of their deposit should the landlord fail to comply with my order.

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: November 16, 2020

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Residential Tenancy Branch