



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlords served the tenants with their application for dispute resolution and evidence via registered mail. I find that the above documents were served in accordance with section 89 and 88 of the *Act*, respectively.

The tenants testified that they did not serve the landlords with their evidence.

Section 3.15 of the Residential Tenancy Branch Rules of Procedure states that the respondents' evidence must be received by the applicants and the Residential Tenancy Branch not less than seven days before the hearing. I find that since the tenants did not serve the landlords with their evidence, the tenants' evidence is excluded from this proceeding.

### Preliminary Issue- Amendment

Tenant P.H. testified that H. is not her legal last name but is a name she goes by. P.H. provided her legal last name in the hearing. Pursuant to section 64 of the *Act*, I amend the landlords' application to include both names.

### Issues to be Decided

1. Are the landlords entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
2. Are the landlords entitled to retain the tenants' security and pet damage deposits, pursuant to section 38 of the *Act*?
3. Are the landlords entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 15, 2020 and ended on August 16, 2020. Monthly rent in the amount of \$1,300.00 was payable on the first day of each month. A security deposit of \$500.00 and a pet damage deposit of \$150.00 were paid by the tenants to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Section 4 of the Addendum to the Tenancy Agreement states:

The tenant is responsible for lawn maintenance of the cottage area. The tenant may have access to the landlord's push lawnmower, weed wacker, rake, hoses and sprinklers.

Both parties agree that the landlords did not complete a move in condition inspection report at the start of this tenancy. Both parties agree that the deposits were not returned at the end of this tenancy. Both parties agree that the tenants provided the landlords

with their forwarding address via text message. The tenants could not recall on what date the text was sent, the landlords testified that they received it on August 25, 2020.

The landlords applied for dispute resolution on August 23, 2020.

The landlords testified to the following facts. The tenants did not water or cut the lawn as required in section 4 of the addendum and so the lawn died. The landlords testified that the tenants' dog dug deep holes in the ground in the area she was tied up outside. Photographs of same were entered into evidence. The landlords entered into evidence a photograph showing green grass in the front of the house, though the majority of the area with holes cannot be seen. The landlords testified that the photograph was taken on May 1, 2020 and shows the condition of the lawn when the tenants moved in. The landlords entered into evidence a photograph they testified was taken on July 1, 2020 which shows large holes in the yard and little to no grass in that area. The landlords entered into evidence a photograph of the yard which they testified was taken on August 15, 2020. It shows that the grass is brown and that the holes have been filled, but no grass is on that area.

The landlords entered into evidence a quote from a landscape company for "lawn revitalization" in the amount of \$830.00 plus GST. The landlords testified that they did not hire the company and repaired the lawn themselves by using a rototiller and re-seeding the area. The landlords testified that this took them two days. The landlords testified that they are seeking to retain the tenants' pet damage deposit in the amount of \$150.00 as compensation for the above work.

The tenants testified that the photographs are not time stamped so it is impossible to tell when the photographs were taken. The tenants testified that the grass was dead when they moved in. Tenant P.H. testified that she was in her first trimester of pregnancy during this tenancy and was very ill. Tenant P.H. testified that every time she tried to do lawn care; the landlords were already out there doing it.

The tenants testified that they never saw their dog dig the holes in the lawn but did see the landlord's dog digging in that area.

The tenants testified that they filled the holes in the lawn at the end of the tenancy.

## Analysis

Section 67 of the *Act* states:

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.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the testimony of both parties, I find that the tenants did not water the lawn of the subject rental property, contrary to section 4 of the Tenancy Agreement Addendum. I accept the landlords' testimony that the lawn was not dead when the tenants moved in. Tenant P.H. did not dispute the landlords' testimony that the tenants did not water the lawn, she testified that the landlords maintained the lawn whenever she went to do it. The tenant's pregnancy related illness does not negate the tenants' responsibility to maintain the lawn. I note that the tenants did not provide a reason why tenant B.M. did not complete the lawn care.

I find that failing to water the lawn during the summer, caused damage to the lawn.

The tenants testified that they did not see their dog digging in the area it was tied up and blamed the holes on the landlords' dog. I find it highly unlikely that the tenants' dog

was not responsible for at least some of the holes where it was tied up which is further supported by the tenants' agreement to fill the holes at the end of the tenancy. I find it improbable that the tenants would agree to fill the holes if their dog did not dig them. I find that in digging holes in the lawn, the tenants' dog damaged the grass, contrary to section 37(2)(a) of the *Act*.

I find that the landlords suffered a loss as a result of the tenants' breach of section 4 of the Tenancy Agreement Addendum and section 37(2)(a) of the *Act*. I find that the landlords have not proved the value of their loss as they did not provide evidence as to how the \$150.00 they are seeking was arrived at, other than it is the amount of the pet damage deposit.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that while the landlords' have not proved the value of their loss, I am satisfied that the tenants have breached the landlords' legal rights and that a loss was suffered by the landlords. Pursuant to Residential Tenancy Policy Guideline 16, I award the landlords nominal damages in the amount of \$150.00.

As the landlords were successful in this application for disputer resolution, I find that they are entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

### Security and Pet Damage Deposits

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 23(4) of the *Act* states:

The landlord must complete a condition inspection report in accordance with the regulations.

Section 24(2)(c) of the *Act* states:

The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The landlords testified that no move in condition inspection report was completed. Responsibility for completing the move in inspection report rests with the landlords. I find that the landlords did not complete the condition inspection and inspection report in accordance with the Regulations, contrary to section 24(2)(c) of the *Act*.

Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-in inspection report, I find that the landlords' eligibility to claim against the security deposit and pet damage deposit for damage arising out of the tenancy is extinguished.

#### Security Deposit Doubling Provision

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

Section C(3) of Policy Guideline 17 states that unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlords' right to make such a claim has been extinguished under the *Act*.

I find that the landlords were sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the tenants' forwarding address on August 25, 2020 as the landlords confirmed receipt via text message on August 25, 2020.

In this case, while the landlords made an application to retain the tenants' security and pet damage deposits within 15 days of receiving the tenants' forwarding address in writing, the landlords are not entitled to claim against it due to the extinguishment provisions in section 24 of the *Act*. Therefore, the tenants are entitled to receive double their security deposit and pet deposit, as per the below calculation:

\$500.00 (security deposit) \* 2 (doubling provision) = \$1,000.00

\$150.00 (pet damage deposit) \* 2 (doubling provision) = \$300.00

**Total = \$1,300.00**

Section 72(2) of the *Act* states that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenants. This provision applies even though the landlord's right to claim from the security deposit has been extinguished under sections 24 of the *Act*.

### Conclusion

I issue a Monetary Order to the tenants under the following terms:

Item	Amount
Doubled deposits	\$1,300.00
Less nominal damages	-\$150.00
Less filing fee	-\$100.00
<b>TOTAL</b>	<b>\$1,050.00</b>

The tenants are provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: November 24, 2020

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Residential Tenancy Branch