



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDCL, FFL

### Introduction

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

- a monetary order for unpaid rent and for compensation under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlords' agent ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he had permission to represent the two landlords named in this application. This hearing lasted approximately 54 minutes.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlords' application.

The tenant confirmed that he did not submit any evidence for this hearing.

Both parties confirmed that they were ready to proceed with this hearing.

### Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent and for compensation under the *Act*, *Regulation* or tenancy agreement?

Are the landlords entitled to retain the tenant's security deposit?

Are the landlords entitled to recover the filing fee for this application?

### Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on September 1, 2017 and ended on July 24, 2020. Monthly rent of \$2,000.00 was payable on the first day of each month. A security deposit of \$1,000.00 was paid by the tenant and the landlords continue to retain this deposit. Both parties signed a written tenancy agreement, the most recent renewal ending for a fixed term on August 31, 2020. A move-in condition inspection report was completed for this tenancy. A move-out condition inspection report was completed with only the landlord, not the tenant present. The landlords did not give the tenant two opportunities to complete a move-out condition inspection. The tenant provided a written forwarding address to the landlords on July 31, 2020, by way of an email. The tenant did not provide any written permission for the landlords to keep any part of his security deposit. The landlords filed their application to retain the deposit on August 10, 2020.

The landlords seek a monetary order of \$2,400.00, to retain the tenant's security deposit of \$1,000.00, and to recover the application \$100.00 filing fee. The landlords seek \$100.00 for cleaning, \$300.00 to repair floor damage, and \$2,000.00 for a loss of August 2020 rent. The tenant disputes the landlords' entire application.

The landlord testified regarding the following facts. The tenant owes \$2,000.00 for a loss of August 2020 rent, as he breached the tenancy agreement by abandoning the rental unit on July 24, 2020, prior to the end of the fixed term on August 31, 2020. Both parties agreed that the tenant did not pay any rent to the landlords for August 2020, only July 2020 was paid by the tenant. Both parties posted rental advertisements online for re-rental, but the rental market was difficult. The landlords advertised the unit for \$1,980.00 and re-rented it on September 15, 2020 at a monthly rent of \$1,900.00. No students applied to rent the unit and the landlord disputes the tenant's allegation that no students were allowed to rent the unit. The landlords paid to clean the unit for \$233.00 but are only seeking \$100.00 from the tenant, since the tenant did some cleaning of the unit. The landlords' professional cleaned the unit on August 16, 2020, but the landlord did not get an invoice until September 15, 2020, so it was not provided for this hearing.

The dishwasher was dirty, and the landlords provided photographs of the rental unit, which was not to the standard when the tenant moved into the unit. The landlords have not had the floor repaired but got a verbal estimate for \$300.00 for labour and materials. There is a gap in the floor, as per the landlords' photographs. There are new tenants living in the rental unit, so the work cannot be done while they are in there because it will be a mess for them to move, the landlords cannot find the color match, and there is no schedule from the repair people to have the work done yet.

The tenant testified regarding the following facts. He did not cause the floor damage, it occurred as a result of pile driving below, due to construction to the main water pipeline down the street, which sent shock waves and rocked the foundation of the rental building, for a month. The panels in the flooring shifted, the landlord just has to tap it back with a mallet, and it should be up against a window, since it was not cut out of the flooring. The tenant sufficiently cleaned the rental unit before moving out. The dust in the unit and dirt on the dishwasher, in the two photographs provided by the landlords, is not worth the \$100.00 being claimed by the landlords. The tenant provided notice on June 14, 2020 verbally and on June 20, 2020 in writing by email, that he was moving out by July 31, 2020. The tenant purchased his own place. The landlord told the tenant that he was trying to make it difficult to rent the place, the tenant listed it for \$2,000.00 and the landlord did not tell the tenant that he was listing it for \$1,980.00. The landlord refused to rent or allow the tenant to sublet to students because they were not employed.

### Analysis

### Rent Loss

Subsection 45(2) of the *Act* sets out how a tenant may end a fixed term tenancy:

*A tenant 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,*

*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

*(c) 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.*

The above provision states that the tenant cannot give notice to end the tenancy before the end of the fixed term. If he does, he may have to pay for rental losses to the landlords.

In this case, the tenant ended the tenancy and paid rent until July 31, 2020, prior to the end of the fixed term on August 31, 2020. I find that the tenant breached the fixed term tenancy agreement. As such, the landlords may be entitled to compensation for losses they incurred as a result of the tenant's failure to comply with the terms of their tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate the landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

On a balance of probabilities and for the reasons stated below, I award the landlords \$1,000.00 of the \$2,000.00 sought for the loss of rent. I find that the tenant breached the fixed term tenancy agreement. I accept the testimony of the landlord that the landlords were unable to re-rent the unit to new tenants until September 15, 2020.

However, I find that the landlord failed to provide testimonial evidence to indicate when they advertised the unit for re-rental, what details were given, or how long the unit was advertised for. The landlord also failed to provide testimonial evidence to indicate how many inquiries were made for re-rental, how many showings were done, and when they were done. Although the landlords provided documents regarding the advertisements and showings, the landlord did not review any of this evidence during the hearing.

I find that the landlords failed to show how they properly mitigated losses in their efforts to re-rent the unit and why they were unable to rent the unit for over 1.5 months from July 24, 2020 until September 15, 2020. The tenant questioned the landlords' efforts, claiming that the landlords refused to rent to students and lowered the rental price by only \$20.00 from \$2,000.00 to \$1,980.00, which may have contributed in a delay in re-renting the unit. Therefore, I find that the landlords are only entitled to half the cost of rent for August 2020 of \$1,000.00 rather than the \$2,000.00 sought.

The landlords continue to hold the tenant's security deposit of \$1,000.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's entire security deposit of \$1,000.00 in full satisfaction of the monetary award.

The landlords did not complete a move-out condition inspection report with the tenant or provide two opportunities to complete the move-out inspection to the tenant, which extinguished their right to keep the deposit for any damages, as per Residential Tenancy Policy Guideline 17. However, the landlords did not apply for damages, they applied for a rent loss in their application, so I find that their right to retain the security deposit was not extinguished as to the rent.

### Damages

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlords must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the landlords' application for \$400.00 for damages and cleaning, without leave to reapply.

During the hearing, the landlord stated that he was not pursuing the claim for \$150.00 for a strata move-out fee. I notified him that this claim was dismissed without leave to reapply, and he confirmed his understanding of same.

I find that the landlords did not sufficiently prove their damages claim. They did not provide any invoices or receipts for the cleaning or the floor repair to prove the cost as per part 3 of the above test. I notified the landlord during the hearing that the landlords had the burden of proof, as the applicants, to prove their claim. I provided the landlord

with ample time and opportunity to present the landlords' claim during the hearing and to respond to the tenant's claims.

I find that the tenant did not cause damage beyond reasonable wear and tear to the flooring at the rental unit or that he did not sufficiently clean the rental unit, as per Residential Tenancy Policy Guideline 1. I find that the tenant reasonably cleaned the rental unit before he vacated. I find that the tenant is not responsible for the floor damage and the landlords do not intend to repair it anytime soon, if at all, particularly since new tenants are living in the rental unit. The landlords also did not provide the tenant with two opportunities to perform a move-out condition inspection in order to review the cleaning or floor damage with the tenant.

Therefore, the landlords' claims for cleaning of \$100.00 and the floor repair of \$300.00, are dismissed without leave to reapply.

As the landlords were only partially successful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the tenant.

### Conclusion

I order the landlords to retain the tenant's entire security deposit of \$1,000.00 in full satisfaction of the monetary award.

The remainder of the landlords' application is dismissed without leave to reapply.

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 30, 2020

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Residential Tenancy Branch