



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Four Green Properties Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, MNRL-S, FFL

### Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:42 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent (the "agent") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the agent and I were the only ones who had called into this teleconference.

The agent testified that the tenant did not provide a forwarding address at the end of the tenancy and that he obtained her address from a credit report. The agent testified that other agents of the landlord attended at the address and spoke with an occupant, who was the brother of the tenant. The brother confirmed that the address was the correct address for service on the tenant. A witnessed statement confirming the above was entered into evidence.

The agent testified that the tenant was served at the above address via registered mail on September 6, 2020, a receipt for same was entered into evidence. The Canada Post website confirmed that the package was delivered on September 21, 2020. I accept the

above testimony from the agent. I find that the tenant was sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the landlord's application for dispute resolution.

### Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

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

The agent provided the following undisputed testimony. This tenancy began on March 1, 2019 and ended in March 2020. The tenant failed to pay January 2020's rent and a 10 Day Notice to End Tenancy for Unpaid Rent was served on the tenant. The tenant disputed the 10 Day Notice with the Residential Tenancy Branch and hearing was held on March 16, 2020. The file number for the previous hearing was provided in the hearing and is located on the cover page of this decision. The tenant did not attend the March 16, 2020 hearing and the landlord was granted an Order of Possession.

The agent testified that at the end of March 2020 the landlord posted a 24 hour notice of inspection on the tenant's door. When the landlord entered, the landlord found that the tenant had abandoned the subject rental property but had left a considerable amount of personal items at the subject rental property. The agent testified that possession of the subject rental property was regained by the landlord on or around March 27, 2020.

The agent testified that monthly rent in the amount of \$1,150.00 was payable on the first day of each month. A security deposit of \$575.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that a move in condition inspection report was completed at the start of this tenancy. The move in condition inspection report was entered into evidence. The landlord testified that the tenant was not asked to complete a move out condition inspection report because the tenant abandoned the unit and did not provide a forwarding address.

The agent testified that the following damages arose from this tenancy:

<b>Item</b>	<b>Amount</b>
Rent from January to March 2020	\$3,450.00
Late rent fees	\$100.00
Item removal	\$225.00
Cleaning	\$108.00
Repairs	\$180.50
New toilet seat	\$18.08
New outlet covers	\$1.88
<b>Total</b>	<b>\$4,083.46</b>

### Rent

The agent testified that the tenant did not pay rent for January to March 2020 and accrued \$3,450.00 in unpaid rent. The landlord entered into evidence a statement of account confirming the above testimony.

### Late fees

The agent testified that the tenant accrued late fees of \$25.00 per month for November 2019, and January 2020- March 2020. The statement of account confirmed the agent's testimony.

The tenancy agreement states at section 12:

The tenant may be charged an administration fee of up to \$25.00 for late payment of all or a portion of the rent, returned or NSF cheques, plus any service fees charged to the landlord by a financial institution.

### Item Removal

The agent testified that the tenant left a large amount of belongings at the subject rental property, photographs of same were entered into evidence. The agent testified that he paid two labourers a total of \$225.00 to haul the items away. Receipts for same in the amount of \$105.00 and \$120.00 were entered into evidence.

### Cleaning

The agent testified that the tenant did not clean the subject rental property at the end of the tenancy. Photographs showing the subject rental property was not cleaned were entered into evidence. The agent testified that a cleaner was hired to clean the property which cost \$108.00. A receipt for same was entered into evidence.

### Repairs

The agent testified that the following repairs were required at the end of the tenancy:

- Repair main door;
- Replace missing window crank;
- Repair closets in master bedroom;
- Replace broken outlet cover;
- Replace missing toilet seat; and
- Reattach moldings.

The agent testified that all of the above were in working order at the beginning of the tenancy and required repair/replacement at the end of the tenancy. This testimony is supported by the move in condition report.

A receipt for the above repairs in the amount of \$180.50 was entered into evidence. The landlord also entered a receipt for a new toilet seat in the amount of \$18.08 and outlet cover in the amount of \$1.88. The agent testified that he did not know how old the missing toilet seat and broken outlet cover were at the end of the tenancy.

## Analysis

### Rent

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,150.00 on the first day of each month. Based on the testimony of the agent and the statement of account entered into evidence I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlords \$3,450.00 in unpaid rent from January to March 2020.

I find that since the tenant did not provide the landlord with a written notice to end tenancy before the landlord learned of the tenant's abandonment, the tenant is required to pay rent until the end of March 2020.

### Late fees

Section 7(1)(d) of the *Residential Tenancy Regulation* (the "*Regulation*") states that a landlord may charge subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent. Section 7(2) of the *Regulation* states that a landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

Pursuant to section 7(1)(d) of the *Regulation* and section 12 of the Tenancy Agreement, I find that the landlord is entitled to charge a \$25.00 fee for late payment of rent. Based on the agent's testimony and the statement of account entered into evidence, I find that the tenant owes the landlord \$100.00 in late fees for November 2019 and January to March 2020.

### Item removal and cleaning

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

Based on the undisputed evidence of the agent and the photographs entered into evidence, I find that the tenant breached section 37(2)(a) of the *Act* by failing to remove

all of her belongings and failing to clean the subject rental property. I find that the landlord is entitled to recover the cost of removing the tenant's belongings and cleaning the subject rental property in the amount of \$333.00.

### Repairs

Based on the agent's undisputed testimony and the move in condition inspection report entered into evidence, I find that the subject rental property was in working condition at the beginning of this tenancy. Based on the agent's undisputed testimony, the photographs entered into evidence and the receipt detailing the required repairs, I accept the agent's testimony regarding the condition of the subject rental property at the end of the tenancy. I find that the tenant left the subject rental property damaged, contrary to section 37(2)(a) of the *Act* and is responsible for the cost of the repairs, in the amount of \$180.50.

The agent testified that he did not know how old the toilet seat and outlet cover were. I find that without this information I cannot complete a useful life calculation on the value of the items damaged by the tenant that required replacement. Nonetheless, I find that the damaged items still had some useful life left as they were operational at the start of the tenancy.

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 the landlord is entitled to nominal damages for the toilet seat in the amount of \$10.00 and nominal damages for the outlet cover in the amount of \$1.00.

### Security Deposit

I find that the landlord complied with section 23 of the *Act* as a move in condition inspection report was completed by both parties. I find that the landlord was unable to comply with section 35 of the *Act*, completing a move out condition inspection report with tenant at the end of the tenancy, because the tenant vacated the subject rental property without providing the landlord with notice contrary to section 45 of the *Act*.

I accept the agent's undisputed testimony that the tenant did not provide the landlord with the tenant's forwarding address in writing.

Section 38(1) of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(a) and 38(1)(b) of the *Act*.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's \$575.00 security deposit.

### Conclusion

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

Item	Amount
Unpaid rent	\$3,450.00
Late fees	\$100.00
Item removal and cleaning	\$333.00
Repairs	\$191.50
Filing Fee	\$100.00
Less security deposit	-\$575.00
<b>TOTAL</b>	<b>\$3,599.50</b>

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 *Residential Tenancy Act*.

Dated: December 14, 2020

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Residential Tenancy Branch