



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Alwynds Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- Compensation for monetary loss or other money owed;
- Retention of the Tenants' security deposit; and
- Recovery of the \$100.00 filing fee.

The hearing was convened by telephone conference call and was attended by the Owner of the rental unit and an agent for the Landlord (the Agent), both of whom provided affirmed testimony. Although the phone line and teleconference remained open for 17 minutes, neither the Tenants nor an agent acting on their behalf attended. The Agent and Owner were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondents must be served with a copy of the Application and Notice of Hearing. As neither the Tenants nor an agent acting on their behalf attended the hearing, I confirmed service of these documents as explained below.

The Agent testified that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, as well as all documents provided to them by the Residential Tenancy Branch (the Branch) in relation to the hearing, were sent to the Tenants by registered mail on September 4, 2020, the same date they were made available by the Branch, at the forwarding address provided by the Tenants via email on August 23, 2020. The Agent and Owner provided me with the registered mail receipt and tracking number and the Canada Post website confirms that the registered mail was sent as described above and delivered on September 9, 2020. As a result, I

find that the Tenants were served the above noted documents, including a copy of the Application and the Notice of Hearing, in accordance with the Act and the Rules of Procedure on September 9, 2020.

I confirmed that the Notice of Hearing contains the correct hearing date, time, and access information. Based on the above and pursuant to rules 7.1 and 7.3 of the Rules of Procedure, the hearing therefore commenced and proceeded as scheduled, despite the absence of the Tenants or an agent acting on their behalf.

The Agent stated that the documentary evidence before me was sent to the Tenants by registered mail at their forwarding address on September 10, 2020. The Agent and Owner provided me with the registered mail receipt and tracking number and the Canada Post website confirms that the registered mail was sent as described above and delivered on September 16, 2020. As a result, I find that the Tenants were served the documentary evidence before me from the Landlord on September 16, 2020, in accordance with the Act and the Rules of Procedure. I therefore accept this documentary evidence for consideration.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Agent and Owner, copies of the decision and any orders issued in favor of the Landlord will be emailed to them at the email address for the Agent provided in the Application.

#### Issue(s) to be Decided

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Landlord entitled to retain the Tenants' security deposit?

Is the Landlord entitled to recovery of the \$100.00 filing fee?

#### Background and Evidence

The tenancy agreement in the documentary evidence before me, signed by the Tenants and the Owner on June 13, 2020, states that the one year fixed term of the tenancy commenced on July 1, 2020, and was set to end on June 30, 2021, after which time the

tenancy would continue on a month to month (periodic) basis. The Tenancy agreement states that rent in the amount of \$2,200.00 is due in advance on the 30<sup>th</sup> or 31<sup>st</sup> (last day of the month), and that a security deposit in the amount of \$1,100.00 was paid. The tenancy agreement also states that water, free laundry, a refrigerator, stove, window coverings, carpets and parking for one vehicle is included in rent and that the Tenants are to pay 2/3 of other utilities. Two single page addendums to the tenancy agreement were also submitted. The Agent and Owner stated that these are the correct terms for the tenancy agreement and that the Landlord still holds the \$1,100.00 security deposit in trust.

The Agent and Owner stated that on July 31, 2020, the Tenants gave notice to end their tenancy as soon as possible by text message, due to their dissatisfaction with the handling of a pest control issue. The Agent and Owner stated that the Tenants ultimately vacated the rental unit on August 15, 2020, and denied that the tenancy was ended for a breach of a material term of the tenancy agreement, stating that they had properly and swiftly addressed the pest issue and that the Tenants had not given any notice that they were seeking to end the tenancy for a breach of a material term of the tenancy agreement or an opportunity to address the Tenants' concerns prior to the issuance of a notice to end tenancy by the Tenants, as required. Copies of correspondence with the Tenants regarding pests and pest control receipts were submitted for me review and consideration.

The Agent and Owner stated that no rent was paid for August and that although they initially posted the rental unit for re-rental as soon as the Tenants gave notice, the Tenants refused to allow access for showings, and as a result, the rental unit could not be properly shown until after the Tenants vacated. The Agent and Owner stated that the rental unit was ultimately re-rented for September 1, 2020, two weeks after the Tenants vacated, and at the same monthly rental rate. As a result, the Agent stated that the Landlord is only seeking the \$2,200.00 in lost/unpaid rent for August 2020, as the Tenants ended their fixed-term tenancy agreement 10.5 months early in breach of section 45(2) of the Act and paid no rent for August 2020.

The Agent and Owner stated that move-in and move-out condition inspections and reports were completed and served on the Tenants as required by the Act and regulations. Copies of the move-in and move-out condition inspection reports were submitted for my review. The Agent and Owner stated that when the Tenants vacated the rental unit on August 15, 2020, they did not leave the rental unit reasonably clean as required by the Act and therefore \$300.00 in cleaning costs and \$150.00 in carpet cleaning costs were incurred. A receipt for the carpet cleaning costs was submitted and

the Owner stated that they cleaned the rental unit themselves for 10 hours, and as a result, no receipt has been submitted. The \$300.00 represents the costs incurred by the Owner in terms of time, effort, and cleaning supplies.

The Agent and Owner therefore sought a Monetary Order in the amount of \$1,650.00; \$2,200.00 in unpaid/lost rent for August 2020, \$150.00 in carpet cleaning costs, \$300.00 in general cleaning costs, and \$100.00 for recovery of the filing fee, less the \$1,100.00 security deposit held in trust by the Landlord.

Despite my finding earlier in this decision that the Tenants were properly served with a copy of the Application, notice of this hearing, and the documentary evidence before me on behalf of the Landlord as required by the Act and the Rules of Procedure, no one attended the hearing on behalf of the Tenants to provide any evidence or testimony for my consideration.

### Analysis

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. It also states that landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

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 the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

Based on the uncontested documentary evidence and affirmed testimony before me from the Agent and Owner, I am satisfied that rent in the amount of \$2,200.00 was due in advance for August 2020, on July 31, 2020, the same day that the Tenants gave notice to end their tenancy by text message. Although I am satisfied that the tenancy ended on August 15, 2020, when the Tenants vacated the rental unit and completed the move-out condition inspection and report, there is no evidence before me that the Tenants had a right under the Act to end their tenancy earlier than June 30, 2020. I therefore find that the Tenants ended their tenancy early in breach of section 45(2) of the Act. I am also satisfied that no rent was paid by the Tenants for August 2020 and that the rental unit was re-rented expediently, September 1, 2020, and at a reasonably

economic rate, which is the same rate payable by the Tenants under their tenancy agreement. Pursuant to sections 7 and 26 of the Act, I therefore find that the Landlord is entitled to recovery of \$2,200.00 in rent for August 2020.

Having made this finding, I will now turn my mind to the matter of cleaning costs. Section 37(2) and the Act and Policy Guideline 1 state 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. I am satisfied by the undisputed documentary evidence and affirmed testimony before me from the Agent and the Owner that the rental unit was not left reasonably clean at the end of the tenancy, resulting in \$150.00 in carpet cleaning costs and \$300.00 in general cleaning costs. As these amounts appear reasonable to me, I grant the Landlord recovery of these costs. As the Landlord was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act.

As I am satisfied that the Landlord or their agents complied with the Act and regulations with regards to condition inspections and reports, and the Application seeking retention of the Tenants' security deposit was filed by the Landlord within 15 days of the date the Agent states that the Tenants' forwarding address was received in writing by email (August 23, 2020), which is later than the end date for the tenancy, August 15, 2020, I therefore find that the Landlord complied with section 38(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I therefore authorize the Landlord to retain the \$1,100.00 security deposit towards the above noted amounts owed and grant the Landlord a Monetary Order in the amount of \$1,650.00 pursuant to section 67 of the Act: \$2,200.00 in rent for August 2020, \$450.00 in cleaning costs, plus \$100.00 for recovery of the filing fee, less the \$1,100.00 security deposit retained.

### Conclusion

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$1,650.00**. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants 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 Act.

Dated: December 14, 2020

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Residential Tenancy Branch