



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDL-S, MNRL-S, MNDCL, FFL**

### Introduction

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

- A monetary Order for Damages and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67;
- An order for compensation for monetary loss or other money owed pursuant to section 67; and
- Authorization to recover the filing fees from the tenant pursuant to section 72.

Both the landlord and the tenant attended the hearing. As both parties were present, service of documents was confirmed. The tenant acknowledged being served with the landlord's Application for Dispute Resolution Proceedings Package and the landlord acknowledged being served with the tenant's evidence. Neither party raised any issues with timely service of documents, and both were prepared to have the merits of the landlord's application heard.

### Preliminary Issue

The tenant provided a copy of a decision and order made by an adjudicator of the Residential Tenancy Branch regarding the return of his security deposit. This decision was rendered on August 16, 2020 and the file number is noted on the cover page of this decision. As the return of the security deposit has already been adjudicated upon, I am barred by the legal doctrine of *Res Judicata* from re-trying the issue once again. As this issue has already been determined, I will not make any ruling as to whether the landlord may retain any part of the tenant's security deposit.

### Issue(s) to be Decided

Is the landlord entitled to compensation for damages he says were caused by the tenant?

Can the landlord recover arrears in rent?

Can the landlord be compensated for missing time from work to deal with this matter?

Can the landlord recover the filing fee?

### Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The tenancy began on October 1, 2019 as a one year fixed term tenancy. Rent was set at \$2,300.00 per month, payable on the first day of each month. At the commencement of the tenancy, the landlord collected a security deposit of \$1,150.00 and a pet damage deposit of \$1,150.00. The landlord and the tenant did not perform a condition inspection report at the commencement of the tenancy although the landlord states they did a walkaround and everything was in good shape. The landlord testified the rental unit was built in 1978, making it approximately 40 years old.

On May 2, 2020, the tenant sent the landlord an email, advising that he couldn't afford the rental property anymore due to the pandemic. He applied for the rental subsidy and asked the landlord to put the rental unit back on the market for rent. In the email, the tenant states, *"You do have \$2,300.00 of mine for pet and damage deposit so you will get your months rent"*

The landlord responded by email, advising he would sign a mutual agreement to end the tenancy if he could find a renter for June 1<sup>st</sup>. He responds, *"As for the damage deposits being the rent, I am required to hold that in trust until the tenancy is ended... You will receive your damage deposit back when the final walkthrough is done"*.

On May 25, 2020, the parties signed a mutual agreement to end the tenancy effective 7:00 p.m. on May 25, 2020. The landlord acknowledges receiving the tenant's forwarding address by email at 5:30 p.m. on May 26<sup>th</sup>, however that email was not provided as evidence.

The landlord testified that he received the \$500.00 rent subsidy from the provincial government, leaving an additional \$1,800.00 rent for the month of May left unpaid by the tenant. The landlord also received an additional \$500.00 rent subsidy from the government for April's rent, however the landlord testified he emailed the government authority advising that the tenancy had ended and that he is ineligible to receive money from them. The landlord testified that as of the date of this hearing, the government has not sought to recover the overpayment. The landlord seeks to recover the remaining \$1,800.00 in rent for the month of May.

The landlord testified that when the tenant left the rental unit, there was damage to the house, including a damaged fireplace door, tile and walls. The house was not left clean. No photographs of the damage to the rental unit were provided as evidence. The landlord testified the tenant told him he would fix the fireplace before he left, however this wasn't done. The landlord provided a quote from a fireplace specialist to remove and replace the door assembly for the fireplace at a cost of approximately \$2,700.00. No quotes for the cleaning or to repair the broken tiles was provided.

The landlord seeks an additional \$500.00 for missing time from work to "deal with the negligent renter".

The tenant provided the following testimony. He acknowledges he did not pay rent for the month of May though he signed the mutual agreement to end the tenancy for the end of May. The tenant submits that since the government overpaid the landlord by giving him the June supplement of \$500.00, this amount should be deducted from the amount of arrears owed by him to the landlord.

The tenant doesn't acknowledge any damage to the tiles or walls and states the rental unit was left clean at the end of the tenancy. The fireplace glass was damaged during the tenancy however and he did not have it repaired. The tenant submits that the quote to fix the fireplace submitted by the landlord is excessively expensive. He provided a price list from the original fireplace manufacturer showing the replacement glass costs \$155.00 and he also provided a quote from a contractor indicating it costs \$300.00 plus GST to remove, replace and reglaze the front door glass on the fireplace.

### Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

Section 26 of the *Act* states:

#### ***Rules about payment and non-payment of rent***

**26** (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Based on the testimony of the landlord and tenant, I find the tenant had no right to deduct any portion of his rent. I am satisfied the tenant did not pay his rent in full for the month of May 2020, leaving a shortfall of \$1,800.00 in arrears owing to the landlord. I find the landlord was compensated by the government subsidy for the remaining \$500.00. In not paying his rent in full, the tenant is in breach of section 26 of the *Act*. I award the landlord a monetary order in the amount of **\$1,800.00** pursuant to section 7 of the *Act*.

Section 14 of the Residential Tenancy Regulations (“Regs”) state:

*the landlord and tenant must complete a condition inspection described in section 23 or 35 of the Act [condition inspections] when the rental unit*

*is empty of the tenant's possessions, unless the parties agree on a different time.*

Sections 17 and 18 of the Regs indicate it is the landlord's responsibility to schedule the inspections and provide a copy to the tenant.

Section 21 of the Regs state that

*in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.*

Without a condition inspection report signed by the parties acknowledging the pre-existing conditions of the rental unit, the landlord has put himself in a position where he cannot prove, on a balance of probabilities, the existence of the damages caused by the tenant when the tenancy ended. Though his testimony bears some weight, he has not met the burden of proof to show me the difference in condition between move-in and move-out. While the condition inspection report would provide the most compelling proof of damage, photographs to corroborate the landlord's claim would also have been informative. The landlord has provided neither. The landlord's claim for cleaning and tile damage repair is dismissed.

The tenant acknowledged the fireplace glass broke during his tenancy. Section 32(3) of the *Act* states a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. I find the tenant is responsible for the damaged fireplace glass that was not repaired. The landlord supplied a single quote for the repair of the glass, stating he only wanted a professional fireplace repairman to do the work. This quote included replacement of the door assembly which I am not satisfied needs to be done.

Nonetheless, the landlord's text messages seem to indicate the landlord was willing to allow the tenant to have the repairs done by whomever he chose while still residing in the unit. I find the landlord has not taken steps to mitigate the damage (point 4 of the 4-point test). I find the quote provided by the tenant to repair the glass to be reasonable and pursuant to section 67 of the *Act*, I award the landlord the amount of **\$315.00**, including GST to have the work done.

The landlord seeks an additional \$500.00 for missing time from work to “deal with the negligent renter”. Section 72(1) of the *Act* provides that an Arbitrator may award one party recovery of the filing fee from the other party; however, the *Act* does not provide for recovery of other costs associated with making an Application for Dispute Resolution, gathering evidence, copying evidence or serving hearing documents. The landlord’s application seeking to recover the costs involved in pursuing this claim are dismissed without leave to reapply.

As the landlord’s application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Item	Amount
May 2020 arrears in rent	\$1,800.00
Cost to replace fireplace glass	\$315.00
Filing fee	\$100.00
<b>Total</b>	<b>\$2,215.00</b>

#### Conclusion

I issue a monetary order in the landlord’s favour in the amount of **\$2,215.00**.

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 07, 2020

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Residential Tenancy Branch