



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, OPC, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain all or a portion of the tenant's security deposit in satisfaction of the monetary order requested, under section 72;
- an order of possession under a One Month Notice to End Tenancy for Cause ("the Notice"), pursuant to sections 47 and 55;
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 10:11 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlords NG (the landlord) and AG, attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Advocate KD also attended. 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 landlords, their advocate and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) by registered mail on October 24, 2020, in accordance with section 89(2)(b) of the Act (the tracking number is recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on October 29, 2020, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

### Preliminary Issue – Vacant Rental Unit

At the outset of the hearing the landlord informed me on November 13, 2020 he learned the tenant abandoned the rental unit.

The application for an order of possession is moot since the tenancy has ended and the tenant left the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order of possession.

### Issues to be Decided

Are the landlords entitled to:

1. a monetary order for loss under the Act, the regulation or tenancy agreement?
2. an authorization to retain the tenant's security deposit in satisfaction of the monetary order requested?
3. an authorization to recover the filing fee for this application?

### Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained to the attending party it is their obligation to present the evidence produced.

The periodic-term tenancy started on August 15, 2019. On November 13, 2020 the landlord learned the tenant abandoned the rental unit. Monthly rent was \$1,200.00 plus 25% of the cost of utilities, due on the first day of the month. At the outset of the tenancy the landlords collected a security deposit of \$600.00 and hold it in trust. The tenancy agreement was submitted into evidence.

The tenant did not provide the forwarding address to the landlords.

The move-in inspection form (the inspection form), signed by the landlord and the tenant on the move-in date, was submitted into evidence. It indicates when the tenancy started the stove was brand new, the walls, the floor, and the suite and bedroom's door were in good conditions. The new 2-bedroom, approximately 1,500 square feet rental unit, was purchased in June 2019.

The landlord inspected the rental unit on March 17, 2020 and noticed the stove was damaged. The landlord asked the tenant to replace the stove. When the tenancy ended the stove was not replaced nor repaired. A photograph showing the stove damaged with a broken glass and burner was submitted into evidence. The landlord estimates a new stove will cost \$1,000.00 or \$900.00 and the stove can not be repaired because of its poor condition.

The landlord stated when the tenancy ended the living room and bedroom walls had blood stains and need to be painted. Photographs showing dirty walls were submitted into evidence. The landlord estimates he will spend "around \$1,300.00" to paint the walls.

The landlord testified the tenant damaged the hardwood floor in the approximately 700 square feet living room by spilling liquid. The landlord estimates the he will spend \$800.00 for the material and labour necessary to repair the floor. A photograph was submitted into evidence.

The landlord said the tenant damaged the new suite fire-proof front door and replaced it during the tenancy. The previous door was in perfect conditions when the tenancy started. The replaced door does not fit properly and is missing the moulding. The landlord estimates the he will spend \$1,000.00 for the material and labour necessary to replace the suite fire-proof front door. A photograph was submitted into evidence.

The landlord stated the bedroom door and knob were damaged by the tenant. The landlord estimates he will spend "something like \$300.00" to repair the damaged door. A photograph was submitted into evidence.

The landlord testified he was not able to get written quotations for the repairs. The total amount the landlords are claiming is \$4,500.00.

### Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7 (1) 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.

(2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

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

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

#### Stove

Based on the inspection form, undisputed landlord's testimony and photographs submitted, I find the tenant damaged the new stove and the landlords need to replace it. I find that the estimate of \$900.00 is a reasonable amount to replace the stove.

Residential Tenancy Branch Policy Guideline 40 states the useful life of a stove is 15 years. As the stove was about 1.5 year old when the tenancy ended, I award the landlord 90% of the stove replacement cost.

As such, I award the landlords \$810.00 for this loss (90% of \$900.00).

#### Wall painting

Residential Tenancy Branch Policy Guideline 1 states:

### **PAINTING**

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

Based on the inspection form, undisputed landlord's testimony and photographs submitted, I find the tenant damaged the living room and bedroom walls and the landlord needs to paint these walls.

Residential Tenancy Branch Policy Guideline 05 provides information about the duty to minimize the loss:

#### B. REASONABLE EFFORTS TO MINIMIZE LOSSES

A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:

- remove and dry the possessions as soon as possible;
- promptly report the damage and leak to the landlord and request repairs to avoid further damage;
- file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.

Compensation will not be awarded for damage or loss that could have been reasonably avoided.

#### Partial mitigation

Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss. If in the above example the tenant reported the leak, the landlord failed to make the repairs and the tenant did not apply for dispute resolution soon after and more damage occurred, this could constitute partial mitigation. In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred.

I find that the landlord's estimate of \$1,300.00 to paint the living room and bedroom walls was vague and not convincing. The landlord did not provide evidence or a detailed testimony to explain why it will cost him \$1,300.00 to paint the damaged walls. I find it reasonable to award \$1,000.00 for the cost to repair this damage.

Residential Tenancy Branch Policy Guideline 40 states the interior walls painting has a useful life of 04 years. As the tenancy ended about 1.5 year after the rental unit was purchased, I award the landlord 62.5% of the wall painting cost.

As such, I award the landlords \$625.00 to paint the damaged walls (62.5% of \$1,000.00).

#### Hardwood floor

Based on the inspection form, undisputed landlord's testimony and photographs submitted, I find the tenant damaged the living room hardwood floor and the landlord needs to repair it.

I find that the landlord's estimate of \$800.00 to repair the living room hardwood floor was vague and not convincing. The landlord did not provide evidence or a detailed testimony to explain why it will cost him \$800.00 to repair the hardwood floor. Thus, I find it reasonable to award \$400.00 for this damage.

Residential Tenancy Branch Policy Guideline 40 states the useful life of hardwood floor is 20 years. As the tenancy ended about 1.5 years after the rental unit was purchased, I award the landlord 100% of the cost to repair the hardwood floor.

As such, I award the landlords \$400.00.

#### Front door

Based on the inspection form, undisputed landlord's testimony and photographs submitted, I find the tenant damaged the original suite fire-proof front door, replaced it with another door that does not fit and is missing the moulding and the landlord needs to replace the door. I find that the estimate of \$1,000.00 to replace the suite fire-proof front door is a reasonable amount.

Residential Tenancy Branch Policy Guideline 40 states the useful life of a door is 20 years. As the front door was new when the tenancy started, I award the landlord 100% of the cost to replace the front door.

As such, I award the landlords \$1,000.00 for this loss.

Bedroom door

Based on the inspection form, undisputed landlord's testimony and photographs submitted, I find the tenant damaged the suite bedroom door and the landlord needs to repair it.

I find that the landlord's estimate of \$300.00 to repair the bedroom door was vague and not convincing. The landlord did not provide evidence or a detailed testimony to explain why it will cost him \$300.00 to repair the bedroom door. I find it reasonable to award \$100.00 for this damage.

Residential Tenancy Branch Policy Guideline 40 states the useful life of a door is 20 years. As the bedroom door was about 1.5 years old when the tenancy ended, I award the landlord 100% of the cost to repair it.

As such, I award the landlords \$100.00 for this loss.

Filing fee and summary

As the landlords were successful in this application, I find the landlords are entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord. Thus, I order the landlords to retain the tenant's security deposit of \$600.00 in partial satisfaction of the monetary award granted.

In summary:

Stove	\$810.00
Wall painting	\$625.00
Hardwood floor	\$400.00
Suite front door	\$1,000.00
Bedroom door	\$100.00
Filing fee	\$100.00
Minus security deposit	\$600.00 (subtract)
<b>Total monetary award</b>	<b>\$2,435.00</b>

Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlords to retain the \$600.00 security deposit and grant the landlords a monetary order in the amount of \$2,435.00.

The landlords are provided with this order in the above terms and the tenant must be served with this order in accordance with the Act. 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: January 12, 2021

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Residential Tenancy Branch