



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL, MNDCL, MNRL-S, FFL

### Introduction

This hearing dealt with the landlords' applications 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 or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The landlords testified that they filed two applications for dispute resolution for the same claims. The landlord testified that the first application was not served on the tenants because the tenants did not provide a forwarding address and their application for substituted served was dismissed. I dismiss the landlords' first application for dispute resolution for failure to serve.

The landlords testified that the tenants were served with their second application for dispute resolution via registered mail. The tenant testified that they received the landlord's second application for dispute resolution. I find that the tenants were served with the landlord's application for dispute resolution in accordance with section 89 of the *Act*.

### Issue to be Decided

1. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?

2. Are the landlords entitled to damage or compensation, pursuant to section 67 of the *Act*?
3. Are the landlords entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
4. Are the landlords entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
5. Are the landlords entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

### Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on July 6th, 2018 and ended in July of 2020. The tenants testified that this tenancy ended on July 21, 2020. The landlords testified that it ended on July 20, 2020. Monthly rent in the amount of \$1,332.00 was payable on the first day of each month. A security deposit of \$650.00 was paid by the tenants to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlords testified that the tenants moved out without providing any notice and did not pay rent for July 2020. The tenants testified that on June 27, 2020 they gave landlord K.M. verbal notice of their intention to move out of the subject rental property effective July 21, 2020. Landlord K.M. denied receiving the above verbal notice to vacate. The landlords testified that they are seeking July's rent in the amount of \$1,332.00. The tenants agreed that they did not pay rent for July 2020. Both parties agree that the tenants authorized the landlord to retain their security deposit for unpaid rent in a text dated July 20, 2020. The July 20, 2020 text was entered into evidence.

Both parties agreed that the tenants informed the landlords that they would not be able to pay July 2020's rent on time. The landlords testified that the tenants told them that they would pay July 2020's rent on July 21, 2020.

The landlords testified that they only learned that the tenants were moving out because a neighbour called them on July 20, 2020 and told them that the tenants were moving

out. The following undisputed text messages dated July 20, 2020 were entered into evidence:

- Landlords: "Are you moving out and not paying me the rent which is due on the 21<sup>st</sup> like you said"
- Tenants: "Hi [landlord], Due to dire financial circumstances related to the Covid-19 period we are forced to move out and move in with our family. We have made this difficult decision to move out as we do not want to freeloader off of you. We will ensure the suite is left in a tidy and respectful manner. Please keep our damage deposit. Best regards, [tenants]"
- Landlords: "Sorry to hear however the damage deposit only accounts for 2 weeks of rent. Its now the 21<sup>st</sup>, I'm now at a loss. Not to mention time spent to clean repair and re-rent. You should have notified me prior to your move and we could have discussed the situation. You misled me because you told me you would pay me at of this month (tomorrow actually) and decided to move out with no notice."

Both parties agree that the tenants did not provide the landlords with their forwarding address.

The landlords testified that they were not able to find a new tenant to start on August 1, 2020 and are seeking lost rental income for August 2020 in the amount of \$1,332.00.

The tenants testified that they moved out of the subject rental property because the landlord made the property uninhabitable by reducing the water pressure which affected the heat. The landlords disputed the above testimony.

The landlords testified that the tenants did not clean the carpets at the subject rental property when they left and the landlords incurred an expense of \$183.75 to have them cleaned. A receipt for same was entered into evidence. The tenants testified that they cleaned the carpets at the end of the tenancy. No receipts for same were entered into evidence.

The landlords testified that the tenants left a large yellow and pink stain on the living room carpet and the bedroom carpet. The landlords testified that the carpet was installed just before the tenants moved in. A receipt dated June 29, 2018 for the carpet purchased before the tenants moved in was entered into evidence. The receipt is for 184 yards of carpet in the amount \$2,679.04. The landlords testified that the carpet was purchased for more than one unit. The landlords testified that the subject rental property required 48 yards equaling a cost of \$698.88 for the carpet in that unit. The landlords

entered into evidence a receipt for installing the carpet in the subject rental property in the amount of \$340.00. The landlords are seeking the above costs from the tenants.

The landlords testified that they were not able to replace the carpets before the new tenants moved in. The landlords entered into evidence a video showing a pink stain on the carpet. The carpet cleaning receipt states “yellow and pink stains are permanent in living room. Whatever was spilled had a dye that is not correctable with cleaning.”

The tenants testified that they did not stain the carpet. The tenants entered into evidence photographs of the carpet that do not show stains.

Both parties agree that a move in condition inspection report was completed by the parties on July 6, 2018. The move in condition inspection report was entered into evidence and does not note any staining to the carpets at the subject rental property. The landlords testified that they did not complete a move out condition inspection with the tenants because the tenants did not provide them with a forwarding address or respond to the landlords’ text messages or emails.

The landlords testified that the walls of the subject rental property required some touch ups and drywall repair at the end of the tenancy. A receipt for same in the amount of \$200.00 was entered into evidence. The move in condition inspection report does not note any damage to the walls. The landlords did not enter photographic evidence of the walls.

The tenants testified that the walls were not damaged at the end of the tenancy and entered into evidence photographs of the walls in which no damage can be seen.

### Analysis

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 tenants were obligated to pay the monthly rent in the amount of \$1,332.00 on July 1, 2020 and failed to do so. I find that the tenants did not pay rent in accordance with section 26(1) of the *Act* and owe the landlords \$1,332.00.

The tenancy agreement entered into evidence was a fixed term tenancy from July 6, 2018 to June 30, 2019. After June 30, 2019 this tenancy became a month to month tenancy, also known as a periodic tenancy.

Section 45 of the *Act* states:

**45(1)**A tenant may end a periodic 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, and

(b) 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.

(2)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.

(3)If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4)A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 of the *Act* states that in order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

(d.1)for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and  
(e)when given by a landlord, be in the approved form.

I find that the tenants did not provide the landlords with a notice to end tenancy that complies with section 52 of the *Act*, contrary to section 45 of the *Act*. From the evidence provided before me, I find that the landlord learned of the tenant's departure from the subject rental property on July 20, 2020.

Residential Tenancy Policy Guideline #3 states:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

This issue is expanded upon in Policy Guideline #5 which explains that, where the tenant's notice to end tenancy specifies a time that is earlier than that permitted by the legislation, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.

Pursuant to section 45 of the *Act*, the earliest date a notice to end tenancy given on July 20, 2020 could take effect was August 31, 2020. I therefore find that the tenants owe the landlord \$1,332.00 for August 2020's rent.

The tenants testified that they ended the tenancy because the landlords made the subject rental property uninhabitable. Based on the tenants' text message entered into evidence, I find that the tenants ended this tenancy due to financial difficulties. I find that the tenants did not end this tenancy pursuant to section 45(3) of the *Act*. I also note that a breach letter following the requirements of section 45(3) of the *Act* was not sent to the landlords.

Residential Tenancy Policy Guideline #1 states that at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

Based on the testimony of the landlords and the lack of a carpet cleaning receipt entered into evidence by the tenants, I find that the tenants did not have the carpets cleaned at the end of this tenancy, contrary to Residential Tenancy Policy Guideline #1. I therefore find that the landlords are entitled to recover the cost of cleaning the carpets in the amount of \$183.75.

Based on the carpet cleaning invoice and the video entered into evidence by the landlords, I find that the tenants stained the carpets at the subject rental property. I find that the carpet photographs entered into evidence by the tenants were not of the stained areas.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

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

Failure to prove one of the above points means the claim fails.

The landlords testified that the carpets of the subject rental property have not been replaced and that new tenants are currently residing in the subject rental property. I find that the landlords have therefore not yet suffered a monetary loss and thus part two of the above test has not been met.

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. While the landlords have not yet suffered a financial loss, I find that the stains to the carpet have decreased the value of that carpet. I find that the landlords are entitled to nominal damages for loss in value of the carpet, in the amount of \$500.00.

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

Based on the photographs entered into evidence by the tenants and the testimony of both parties, I find that the minor dents and blemishes on the walls of the subject rental property constitute reasonable wear and tear for a tenancy lasting two years. I find that the tenants are not responsible for the cost of drywall and painting touch ups.

As the landlords were successful in this application for dispute resolution, I find that they are entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

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.

Section 38(4) of the *Act* states:

- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
  - (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
  - (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

Based on the testimony of both parties, I find that the tenants did not provide the landlords with their forwarding address. I find that the landlords made an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(a) and 38(1)(b) of the *Act*.



I find that the landlords were sufficiently served for the purposes of this *Act*, with the tenant's written permission to retain their security deposit, pursuant to section 71 of the *Act* as both parties confirmed the July 20, 2020 text message was sent and received. I find that the landlords are entitled to retain the tenant's security deposit, pursuant to section 38(4) of the *Act*.

### Conclusion

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

Item	Amount
July rent	\$1,332.00
August rent	\$1,332.00
Carpet cleaning	\$183.75
Nominal damages for carpet stain	\$500.00
Filing Fee	\$100.00
Less security deposit	-\$650.00
<b>TOTAL</b>	<b>\$2,797.75</b>

The landlords are 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 *Residential Tenancy Act*.

Dated: January 15, 2021

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Residential Tenancy Branch