



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking a monetary order for unpaid rent or utilities; a monetary order for damage to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

One of the landlords and the landlords' son attended the hearing, and the landlords' son acted as agent for the landlords and gave affirmed testimony. One of the tenants also attended and gave affirmed testimony.

The tenant advised that the other 2 tenants named in the landlord's application are the tenant's minor children, and I amended the application to remove the names of the children. The frontal page of this Decision reflects that amendment.

The parties were given the opportunity to question each other and to give submissions.

The landlords have provided evidence, and no issues with respect to providing all evidence to the tenant were raised. The tenant has not provided any evidence, and all evidence provided by the landlords has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenant for unpaid rent?
- Have the landlords established a monetary claim as against the tenant for damage to the rental unit or property?

- Have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and specifically for unpaid utilities?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The landlord's agent** testified that this tenancy began on September 1, 2016, and a new tenancy agreement was entered into for a fixed-term tenancy to begin on July 31, 2019 and expiring on July 31, 2020. The tenant moved out around May, 2020. A copy of the newest tenancy agreement has been provided for this hearing. Rent in the amount of \$1,404.50 was payable on the 20<sup>th</sup> day of each month, in addition to 30% of utilities. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$625.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a basement suite, and the landlords reside in the upper level of the home.

The tenant fell into arrears of rent and currently owes \$1,404.50, and the landlords offered to decrease rent to \$702.50, which the tenant didn't pay, so the landlords decided to return to the amount of \$1,404.50. Arrears continued to accumulate and now the tenant is in arrears of rent for May, June and July, 2020 and moved out of the rental unit on July 31, 2020 without notice to the landlords, so the landlords calculated the amount of rent due for the last month at \$561.80.

Also, for the months of May through July, 2020 the tenant didn't pay any utilities, and the landlords have calculated the 30% to \$128.78 for Fortis and \$204.22 for hydro. Copies of the bills have been provided for this hearing. They show that the Fortis bills are in the name of the landlord and an equal payment plan of \$125.00 per month. The first is for the period of February 21 to March 23, 2020 and total consumption was \$187.76. The second runs from March 23 to April 21, 2020 for a total consumption of \$178.24. The next runs from April 21 to May 21, 2020 for a total consumption of \$126.63; and May 21 to June 18, 2020 consumption of \$68.91. The hydro bills also show an equal payment plan of \$204.00 per month, and run from February 22 to March 23, 2020 for \$212.18; March 24 to April 22, 2020 for consumption totaling \$181.59; April 23 to May 21, 2020 for current consumption charges of \$153.16; and May 22 to June 19, 2020 for current consumption charges of \$121.34.

The landlords have provided a Monetary Order Worksheet setting out the following claims totaling \$23,065.50;

- \$22,732.50 for fixing and replacing damaged items;
- \$128.78 for the Fortis bill; and
- \$204.22 for the hydro bills.

No move-in or move-out condition inspection reports were completed. The landlords' agent testified that the claim for damages includes damage to laminate and various missing or damaged items. Numerous photographs have also been provided for this hearing, which are marked "before" and "after" the tenancy. The landlord's agent testified that the "before" photographs are the same photographs that the landlords used for advertising in 2016 prior to this tenancy. The landlords have also provided a quote for repairs totaling \$22,732.50, which states, in part that the estimate is for:

1. Demolish and dump old damage laminate and installing new laminate;
2. Removing and reinstalling baseboards;
3. Replacing 3 bi-fold closet door railings;
4. Replacing doorknob;
5. Replacing toilet sliding door lock;
6. Demolish and dump old damage kitchen countertop and installing new countertop;
7. Replacing part of kitchen cabinet;
8. Replacing part of outside gutter drain-pipe;
9. Repairing wall damage; and
10. Replacing 2 bathroom mirrors.

The quote also states that all materials are included except for baseboards, and includes 5% tax of \$1,082.50.

The landlords' agent does not know how old the laminate was however the claim is for damage to various other missing and damaged items as well. The rental unit was last painted in 2015.

An advertisement from a website shows the cost of replacing the blinds in the living room is \$95.54 at a sale price. Two other advertisements have been provided for this hearing which the landlords claim for replacement of the in 2 studio rooms which had also been damaged by the tenant, and the costs are \$103.00 and \$50.87. The first is a 72-inch by 72-inch blind and the other is 48-inch by 48-inch. Also provided are advertisements for a range hood for a cost of \$145.99 and a waste disposer for \$300.00.

The rental unit has not been re-rented. The tenant has not served the landlords with an Application for Dispute Resolution claiming the security deposit, however the landlords received the tenant's forwarding address in a previous dispute.

The upper level of the home was newly renovated, and to have the tenant move out and to see the condition of the suite really set the landlords back having to make repairs in order to re-rent.

The landlords' application seeks \$23,882.50 for damages; \$2,621.73 for unpaid rent; \$333.00 for unpaid utilities; and recovery of the \$100.00 filing fee.

**The landlord** also testified, and was questioned by the tenant about garbage collection.

**The tenant** testified that it should be the landlords' responsibility to make repairs knowing that there are some physical repairs required. The landlords' agent entered the rental unit on more than 1 occasion to turn on a breaker switch. There was a previous tenant and problems with the rental unit prior to this tenancy, such as holes in walls. Prior to moving in, the tenant's boyfriend mentioned that it was poorly constructed. Floors were splitting, but the tenant didn't ask the landlords for repairs. The tenant fixed some things herself and the landlords were aware. The landlords' agent was in and out from time to time and could have minimized the damage.

The tenant moved out on May 31, 2020 and gave verbal notice to end the tenancy on May 1, 2020, and rent was payable on the 20<sup>th</sup>. The landlords asked for rent for May to July, 2020, but that amount was dealt with in the previous hearing; the tenant could not physically stay there, and had moved out prior to that hearing.

The tenant further testified that neither she nor her children intentionally removed part of the laminate; the construction of the floor is not high quality, and was just a piece of wood on top that came off during walking. One of her kids got caught by it and it ripped out.

The tenant replaced the living room blinds with curtains because the blinds were falling apart after awhile due to wear and tear. The tenant put the blinds aside and then threw them away. Since they were destroyed, she didn't provide them to the landlords.

Broken blinds in the other 2 rooms were also wear and tear, as well as any damage to the countertop, and broken bi-fold doors, which the tenant decided to repair herself.

### Analysis

Firstly, I advised the parties that I would be reviewing the Decision from a previous hearing to ensure that I do not make any findings or orders that have already been adjudicated upon. The hearing was held on July 23, 2020 and the Decision is dated August 21, 2020 concerning an application made by the tenant seeking a monetary order, and other relief and specifies that the Decision dealt only with the tenant's monetary claim. It also states

that the tenant did not pay rent for May 20, 2020 and vacated the rental unit on May 31, 2020, and the tenant therefore resided in the rental unit for free for 11 days.

The Decision also states that rent increases were contrary to the *Act*, and the tenant was not required to pay any rent above \$1,250.00 from August 1, 2018 to May 20, 2020. It also states: "However, the Landlords cannot seek unpaid rent from the Tenant for the period from May 20, 2020 to May 31, 2020 in the future, as I find that the Tenant is entitled to 11 days of free rent, given the breach of section 28 of the *Act*." The tenant was granted monetary compensation in the amount of \$2,290.50 in relation to a rent increase, and recovery of the \$100.00 filing fee.

In this case, the landlords' agent testified that the tenancy ended on July 31, 2020, however that is the expiry date of the fixed term. The previous Decision concludes that the tenant moved out of the rental unit on May 31, 2020. However, it is also clear that the landlords did not receive the Decision of the previous hearing until after filing this Application. The Decision also concludes that rent was \$1,250.00 per month.

In order to be successful for any payment of rent or loss of rental revenue beyond that date, the landlords would be required to demonstrate that the landlords did what was reasonable to mitigate any loss of rental revenue by advertising the rental unit. There is no evidence of that and the landlords' agent testified that as of the date of this hearing, the rental unit has not been re-rented. The landlords' claim for unpaid rent to the end of May, 2020 has already been adjudicated upon, and I dismiss the balance of the landlords' claim for unpaid rent or loss of rental revenue to the end of the fixed-term on July 31, 2020.

With respect to the landlords' claim for unpaid utilities, I have reviewed the bills, and I find that although the previous Decision specified that the tenant had 11 days of free rent for the period of May 20 to May 31, 2020, there is no order that the tenant should not pay utilities for that period. However, the landlords have made claims for other bills after May 31, 2020, which I find that the landlords are not entitled to. Given the amounts and dates of consumption for the bills provided, I find that the tenant was responsible for 30% of the bills to May 31, 2020 in the amounts of **\$155.63** for Fortis and **\$177.88** for electricity: (Fortis February 21 to May 31  $\$187.76 + \$178.24 + \$126.63 + \$26.14 = \$518.77 \times 30\% = \$155.63$ ); (Hydro February 22 to May 31  $\$212.18 + \$181.59 + \$153.16 + \$46.02 = \$592.95 \times 30\% = \$177.88$ ).

The law puts the onus on a landlord to ensure that move-in and move-out condition inspection reports are completed, and the regulations go into detail of how that is to occur. Since the landlords have not completed the reports with the tenant, I find that the landlords' right to make a claim against the security deposit for damages is extinguished.

However, the landlords' right to make a claim for damages is not extinguished. In order to be successful, the landlords must establish the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the landlords made to mitigate any damage or loss suffered.

The *Act* specifies that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy, and in the absence of any reports, I have only the evidence of the landlords and the testimony of the parties to consider.

I have reviewed all of the photographs and other evidentiary material of the landlords. The tenant has provided absolutely no evidence and has no defense to any of the landlords' damage claims other than "wear and tear," and did not dispute any of the landlords' before or after photographs. One of the photographs of a wooden door show that a piece has been cut out by a saw or a chisel. That is not normal wear and tear, nor are damaged tracks for bi-fold doors. The piece of wood in the landlords' photographs that the tenant describes as "a piece of wood on top," is a transition strip, which is required for separation of rooms. I do not accept the hear-say testimony of the tenant that her boyfriend said it was poor quality, nor do I accept that it is normal wear and tear, especially considering that the tenant did not notify the landlords about it at any time during the tenancy. I do not accept the testimony of the tenant that the landlords ought to have mitigated by looking when they went into the rental unit to turn on a breaker switch.

I have reviewed the quote provided by the landlords and have compared it to the photographs and testimony of the parties. The landlords have provided evidence of damages, none of which were disputed by the tenant, other than to say it was all wear and tear. The quote does not indicate specified amounts for specified repairs, but I am satisfied that all of the items requiring repair in the quote have been proven. I am satisfied that the landlords have established the **\$22,732.50** claim.

I have also reviewed the advertisements for replacement blinds at \$95.54, \$103.00 and \$50.87. Considering the photographs, I find that the tenant is responsible for the damage and failed to make repairs to damages caused by the tenant or the tenant's children. Since the tenant has not done so, I find that the landlord has established a claim for blinds totaling **\$249.41**.

With respect to the landlords' claim for the range hood for a cost of \$145.99, the photographs depict a range hood that requires cleaning, and perhaps some repair to the light, but the photographs are not that clear, and I am not satisfied that the landlords have established that claim.

With respect to the claim for a waste disposer for \$300.00, there is no evidence before me that it was damaged at all during the tenancy, and I dismiss that portion of the landlords' claim.

Since the landlords have been partially successful with the application, the landlords are also entitled to recovery of the **\$100.00** filing fee.

The landlords' right to claim unpaid rent or utilities against the security deposit is not extinguished. The landlords currently hold a security deposit of \$625.00, and the landlords' agent testified that the tenant's forwarding address was received in writing with the hearing package served for the July 23, 2020 hearing, and neither party has advised me of what date the landlords were served.

The *Act* requires a landlord to return a security deposit or pet damage deposit to a tenant in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against the deposit within that 15 day period. Where a landlord fails to do so, the landlord must repay the tenant double the amount.

Having found that the tenancy ended on May 31, 2020, and assuming that the forwarding address was received on July 23, 2020, the date of the previous hearing, and considering that the landlords filed the application for dispute resolution on August 14, 2020, I am not satisfied that the landlords have complied with the law. I order that double the amount of the security deposit, or \$1,250.00 should be applied to the debt owed to the landlords.

In summary, I find that the landlords have established the following claims: **\$155.63** for Fortis and **\$177.88** for electricity; **\$22,732.50** for repairs; **\$249.41** for blinds; and recovery of the **\$100.00** filing fee, for a total of \$23,415.42. Deducting the \$1,250.00 for the security deposit, I find that the landlords are entitled to monetary compensation for the difference in the amount of **\$22,165.42**.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$22,165.42**.

This order is final and binding and may be enforced.

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: February 01, 2021

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Residential Tenancy Branch