



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNRL-S, MNDL-S, FFL, MNSDS-DR, FFT

### **Introduction**

On January 29, 2021 a hearing convened to deal with monetary cross applications. The landlord applied for compensation for unpaid rent, damage to the rental unit or residential property, a replacement fob; and, authorization to make deductions from the tenant's security deposit. The tenant applied for return of double the security deposit. Both parties appeared or were represented at the hearing.

An Interim Decision was issued on January 29, 2021 and should be read in conjunction with this decision. As seen in the Interim Decision, the tenant's Application for return of double the security deposit was not pursued by the tenant and it was dismissed. Also, I authorized and ordered the parties to provide me with additional evidence with respect to the tenant's assertion that the landlord's agent had waived entitlement to receive \$600.00 in rent: namely email correspondence with each other and a hotel bill.

On February 3, 2021 the tenant uploaded copies of emails exchanged between her and the landlord's agent between July 1, 2021 and July 3, 2020 along with a hotel invoice indicating she pre-paid for a hotel and checked into a hotel on July 1, 2021. I did not receive any additional evidence from the landlord.

As I stated in the Interim Decision, I would reconvene the hearing if the additional evidence indicated the landlord may have waived entitlement to receive \$600.00 in rent from the tenant for the month of July 2020. In sending out the Interim Decision, an Information Officer erroneously sent a Notice of Dispute Resolution Proceeding indicating the hearing was going to reconvene on April 29, 2021. I have reviewed the additional evidence provided by the tenant and I find her position that the landlord waived entitlement to \$600.00 in rent for the month of July 2020 is not supported, for reasons provided in greater detail in this decision. Therefore, I will not reconvene the

hearing on April 29, 2021 and this is the final decision with respect to the landlord's Application for Dispute Resolution.

As indicated in the Interim Decision, the tenant remains at liberty to pursue a claim against the landlord for loss of quiet enjoyment and/or breach of the tenancy agreement under a separate application and I make no finding as to the tenant's entitlement to receive compensation from the landlord under the landlord's Application for Dispute Resolution.

#### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation, as claimed, against the tenant?
2. Is the landlord authorized to make deductions from the tenant's security deposit?
3. Award of the filing fee.

#### Background and Evidence

Pursuant to a written tenancy agreement, the tenancy started on March 10, 2018 and the tenant was required to pay rent of \$2200.00 on the first day of every month. The tenant paid a security deposit of \$1100.00.

The tenancy ended on September 30, 2020. The parties participated on a move-out inspection together and a move-out inspection report was completed. The tenant indicated she agreed with the landlord's assessment of the condition of the property but there was no written authorization to make deductions from the security deposit on the move-out inspection report.

The landlord subsequently refunded \$120.00 of the tenant's deposit to her, via e-transfer, and continues to hold \$980.00 of the tenant's security deposit and by way of this Application for Dispute Resolution the landlord seeks compensation of \$980.00 from the tenant plus recovery of the \$100.00 filing fee.

Below, I summarize the landlord's claims against the tenant and the tenant's responses.

#### **Damage to front door frame -- \$300.00**

The landlord's agent recorded on the move-out inspection report that the tenant was responsible for the following damage: "front door, small chip in the frame". The tenant

signed the condition inspection report indicating she agreed with the landlord's assessment.

The landlord's agent testified that he took pictures of the damage and sent the pictures to a handyman and obtained an oral estimate from the handyman.

The landlord sent an email to the tenant indicating the handyman had estimated it would cost between \$250 and \$300 to repair the damage.

The landlord's agent testified that he paid the handyman \$300.00 to make the repair to the door frame, in cash; however, he did not obtain a receipt, invoice, written estimate, or any other documentation to show how much he paid the handyman.

The landlord pointed to the email exchanged with the tenant whereby she states the cost of \$250.00 to \$300.00 to fix the door frame "is fine with me"; however, she does not authorize the landlord to deduct any amount for the door frame damage from the security deposit as she did for the fob replacement. The landlord submitted to me that since the tenant was agreeable to the cost in the email, he did not ask for a receipt from the handyman.

The tenant responded that she had expected to receive a copy of an invoice or receipt to demonstrate the actual cost of the repair but that the landlord did not provide one to her. Rather, the tenant was of the position the landlord gave her various excuses for not providing a receipt. In the absence of a receipt or other proof of the actual cost of the repair, the tenant submitted that she is agreeable to compensate the landlord \$100.00 to repair the damage.

#### **Broken fob -- \$80.00**

The landlord seeks \$80.00 to replace a broken fob. The landlord provided a copy of a requisition form for a new fob from the management company showing a replacement fob costs \$80.00. The tenant was agreeable to compensating the landlord the \$80.00 as requested.

#### **Unpaid rent for July 2020 -- \$600.00**

The landlord's agent submitted that the tenant failed to pay rent of \$600.00 for the month of July 2020 and he expected this to be paid by the tenant eventually, once her insurance claim was settled but the tenancy ended before it was settled and without

receiving the rent payment. As such, the landlord seeks to recover the unpaid rent by deducting \$600.00 from the tenant's security deposit.

The tenant testified that on July 1, 2020 she had to stay in a hotel because there had been a flood in the rental unit that originated in the unit above. The tenant testified that she emailed the landlord's agent about going to a hotel and deducting the cost from the rent to which the landlord's agent responded "ok" so she went ahead and pre-paid for the hotel room. The tenant was of the understanding that when the insurance claim was settled with the unit above the landlord would receive the loss of rent. The tenant testified that only when the landlord's agent sent her a partial refund of the security deposit did she discover the landlord was no longer agreeable to allowing her to deduct \$600.00 from the rent.

The landlord's agent denied waiving entitlement or authorizing the tenant to withhold \$600.00 from rent payable to the landlord. The landlord's agent testified that the tenant informed him that she was staying in a hotel and he checked with the insurance company and informed the tenant she should make a claim through her own tenant's insurance. The landlord's agent testified that the tenant did not carry tenant's insurance and she submitted her hotel bill to the insurance agent handling the upper unit's insurance claim. The landlord's agent anticipated the insurance company would reimburse the tenant for her hotel costs and the tenant would pay the outstanding rent but then the tenancy ended before any payment was received. The landlord's agent testified that when the tenancy ended the tenant took the position the landlord could take over her insurance claim but the landlord cannot do that.

The tenant acknowledged that she did submit her hotel bill to the insurance agent handling the upper unit's insurance claim but she has learned that it could take months or years to resolve that claim; whereas, the landlord could have made a claim against the upper unit's insurance policy to seek recovery of the loss of rent and it would be an easier claim to make.

Both parties provided several emails exchanged with each other, and emails exchanged with an insurance agent dealing with the flood that originated from the upper unit. The tenant also provided a copy of her hotel invoice.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this case, the landlord is the claimant and bears the burden of proof. The burden of proof is based on the balance of probabilities.

Upon consideration of everything before me, I provide the following findings and reasons with respect to the landlord's claims against the tenant.

#### **Damage to front door frame**

It was undisputed that the tenant was responsible for damage to the front door frame. The issue before me is whether the landlord has established an entitlement to recovery of \$300.00 to rectify the damage. The tenant challenged the amount claimed as being unreasonable and not sufficiently supported.

The landlord provided a photograph to demonstrate the extent of the damage; however, the landlord did not present a receipt, written estimate, or invoice to demonstrate the loss incurred as a result of the damage. Nor, did the landlord call the "handyman" to testify as to how much he was paid to rectify the damage to the door frame.

I find there is insufficient evidence to satisfy me that the landlord incurred a loss of \$300.00 to rectify the damage to the front door frame; however, the tenant acknowledged some responsibility and estimated that a reasonable cost would have been closer to \$100.00. As such, I proceed to determine the reasonableness of the parties' respective positions.

Upon review the condition inspection report, I note that the landlord described the damage as being a "small chip"; however, the photograph depicts a significant gouge in

the door frame. The photograph show a door frame that appears to be made of MDF (medium density fibre board) which likely required filling, sanding, and painting to repair. In the absence of any other evidence, and based on the photograph, I find the landlord's claim appears high and the tenant's estimate is too low. As such, I find a more fair and reasonable resolution to this dispute would be to award the landlord \$200.00 to rectify the damage to the front door frame.

### **Broken fob**

The landlord claimed and the tenant was agreeable to compensation of \$80.00 for a broken fob. Therefore, I grant the landlord's request for \$80.00 for a broken fob.

### **Unpaid Rent for July 2020**

Under section 26 of the Act, a tenant is required to pay rent when due under their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right under the Act to withhold or otherwise not pay the rent due to the landlord. The Act provides limited and specific circumstances when a tenant may legally withhold rent. Those circumstances are where: the tenant paid an unlawful rent increase previously; the tenant had overpaid a security deposit or pet damage deposit; the tenant has been given authorization to make deductions from rent by the Director (as delegated to an Arbitrator); or, as provided under common law, the party entitled to payment waives entitlement.

The tenancy agreement provides that the tenant is required to pay rent of \$2200.00 per month and the parties provided unopposed evidence that the tenant did not pay \$600.00 of the monthly rent for July 2020.

I heard there was a flood in the rental unit; however, a flood in itself does not entitle the tenant to withhold rent or make deductions from rent. I proceed to consider whether the tenant had authorization or there was a waiver to receive the rent from the landlord or landlord's agent.

The tenant did not have authorization from the Director to make reduce rent payable or make deductions from rent due to a flood or any other reason. Since the tenancy has since ended, the tenant is still at liberty to make an Application for Dispute Resolution seeking a Monetary Order for damages or loss under the Act, regulations, or tenancy agreement with respect to the flood; but, it is not before me to make an award for damages or loss the tenant may have incurred under the landlord's claim.

With respect to waiver, the tenant testified that she incurred hotel costs after receiving the landlord's authorization to deduct such costs, or \$600.00, from rent payable. In providing this testimony, the tenant asserted that she had emails to support that position; however, upon review of the emails and hotel invoice I find her position is not supported. I make this finding after considering the following:

The tenant's hotel invoice shows she prepaid for a hotel and checked into a hotel on July 1, 2020. The tenant provided a copy of an email sent to the landlord's agent on July 1, 2020 whereby she describes the circumstances of the flood and remediation that has taken place and she goes on to state:

"I'll need to stay at a hotel until probably Saturday while all the fans are going so I'm going to use a portion of my July rent to cover that cost. I will send you receipts and what's left over for July rent when it's confirmed I can be back in the apartment."

The landlord's agent responds to the above email on July 2, 2020 at 10:16 a.m., stating:

"Thanks, can you please keep me updated.

Also when is the best time for me to drop by and take a look."

The landlord's agent sends another email to the tenant soon after at 11:53 a.m. on July 2, 2020, stating:

"I just spoke to my insurance agent, she said that the tenant should be claiming her tenant's insurance company for the cost of the hotel if she couldn't stay at the premises. The landlord has no responsibility for the hotel, she still need to pay for the full rent."

The parties continue to have a few more email exchanges, which I have read, and I note that the landlord's agent continues to state to the tenant that rent must be paid and the tenant's insurance would pay for hotel costs if she could not stay in the rental unit. The landlord's agent also suggests the tenant submit the hotel costs to the insurance agent dealing with the flood originating the unit above. The tenant proceeds to submit her hotel invoice to the insurance agent dealing with the unit above and the insurance agent indicates a likeliness that the costs would be reimbursed to the tenant.

Upon review of all of the documentation before me, I find the tenant went to a hotel and pre-paid for the hotel on July 1, 2020 and this is before receiving any communication from the landlord or landlord's agent since the first time the landlord's agent responds to the issue raised by the tenant is on July 2, 2020. Therefore, I reject the tenant's position that she incurred the hotel costs after the landlord authorized her to deduct such costs from rent.

Nor, do I see any other indication that there was a waiver of entitlement to receive the full amount of rent for July 2020 from the landlord or landlord's agent.

I also see consistent statements from the landlord's agent that the landlord is requiring payment of rent starting from July 2, 2020 onwards, which is contrary to the tenant's testimony during the hearing that she was unaware the landlord would pursue her for rent until she received the partial refund of the security deposit.

In light of the above, I find the tenant owes the landlord rent of \$600.00 for the month of July 2020, as required under the tenancy agreement and I award that amount to the landlord.

For added certainty, despite my finding above that the landlord is entitled to receive the full amount of rent for month of July 2020 under the tenancy agreement, the tenant remains at liberty to make a claim for compensation against the landlord for loss of quiet enjoyment and/or breach of the tenancy agreement by filing her own Application for Dispute Resolution.

### **Filing fee, security deposit and Monetary Order**

The landlord's claims were largely successful and I award the landlord recovery of the \$100.00 filing fee.

In keeping with all of my findings and awards above, I find the landlord entitled to compensation from the tenant totalling \$980.00 [\$200.00 for damage to door frame + \$80.00 for broken fob + \$600.00 for rent + \$100.00 for filing fee] and I authorize the landlord to deduct this sum (\$980.00) from the tenant's security deposit. Considering the landlord has already refunded \$120.00 of the tenant's security deposit and still holds \$980.00 of the deposit pending the outcome of this proceeding, given my authorization for the landlord to withhold \$980.00 from the security deposit, it is unnecessary to provide a Monetary Order to either party with this decision.



Conclusion

The landlord is authorized to deduct \$980.00 from the tenant's security deposit in full satisfaction of the landlord's claims against the tenant. The landlord has already refunded the balance of the security deposit to the tenant; therefore, I do not provide a Monetary Order to either party with this decision.

The tenant's application for return of double the security deposit was dismissed.

The tenant remains at liberty to file her own Application for Dispute Resolution if she seeks compensation from the landlord for loss of quiet enjoyment and/or breach of the tenancy agreement.

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 17, 2021

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Residential Tenancy Branch