



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDL-S, 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 landlord applied for:

- a monetary order for unpaid rent, pursuant to sections 26 and 67;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain all of the tenants' security deposit in satisfaction of the monetary order requested, pursuant to section 72; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The landlord was represented by agent TH. Tenant AE represents tenant DE. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

### Service of the Application

The landlord affirmed she served the notice of hearing and evidence by registered mail sent on October 21, 2020. The tenant confirmed receipt of this package. The landlord served a second evidence package by registered mail on January 21, 2021. The tenant confirmed receipt of the second package around one week before the hearing and affirmed he did not have enough time to review the evidence included in the package mailed on January 21, 2021.

As the second package was mailed on January 21, 2021, I deem it served on January 26, 2021, per section 90 (a) of the Act.

Rule of Procedure 3.14 States:

Evidence not submitted at the time of Application for Dispute Resolution Except for evidence related to an expedited hearing (see Rule 10), **documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.**

(emphasis added)

I accept the landlord served the notice of hearing and evidence package mailed on October 21, 2020 in accordance with section 89 of the Act. The second evidence package mailed on January 21, 2021 is excluded, per Rule of Procedure 3.14.

The landlord confirmed receipt of the tenants' response evidence by email sent on January 17, 2021 and affirmed she had enough time to review the documents. Accordingly, I find the landlord was sufficiently served the tenants' response evidence, per section 71(2)(c) of the Act.

### Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. a monetary order for loss?
3. an authorization to retain the tenants' deposit?
4. an authorization to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to all the evidence provided by the parties, including the accepted documentary evidence and the testimony, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate her claims.

Both parties agreed the tenancy started on October 01, 2018, the keys were returned on September 28, 2020 and the tenancy end-date was September 30, 2020. Rent was \$2,306.25 per month, due on the first of the month. At the outset of the tenancy a deposit of \$1,125.00 and a fob deposit of \$200.00 were collected. The landlord holds the security deposit and fob deposit (the deposits) in the total amount of \$1,325.00 in trust. The tenancy agreement was submitted into evidence.

Both parties also agreed the forwarding address was provided in writing on September 28, 2020 and the tenants only paid \$1,181.25 for September 2020 rent. This application was filed on October 14, 2020.

The landlord is claiming for \$1,125.00 for the balance of September 2020 rent and a total amount of \$3,092.25 for cleaning, painting and mould losses.

The landlord is claiming for \$257.25 for cleaning expenses . The landlord stated the rental unit was not clean when the tenancy ended. The landlord hired cleaners to clean the interior of the dishwasher, oven and fridge, the bathroom and the balcony glass door. There was mould in the interior of the washing machine and there were bugs in the rental unit. The move-out inspection form (the form), signed by both parties, was submitted into evidence. It states the 2-bedroom rental unit was not clean when the tenancy ended: "cleaning: some debris in kitchen, some scratches on oven & fridge, 2 chips on counter, dent on fridge door, few stain on carpet, 1 dining room floor chip".

The tenant affirmed he did not read the form carefully before signing it, the rental unit was clean when the tenancy ended and the landlord only cleaned the rental unit on November 02, 2020. The tenant stated the rental unit got dirtier between the end of the tenancy and the cleaning date.

The landlord is claiming for \$2,835.00 for painting and mould treatment expenses. The landlord testified the tenant damaged the wall paint. A column in the living room had several dings, the entry hall and hallway walls had several dings and the kitchen wall was also damaged beyond wear and tear. The walls were painted in September 2018. The tenant said the living room column paint peeled, the other walls did not have scratches beyond regular wear and tear and the cost to paint the living room column was \$100.00. The report states: "Painting: "chips, dents and stuff marks on walls".

The landlord stated there was mould in the living room by the balcony doors when the tenancy ended and the tenant is responsible for this mould. The tenant affirmed the mould is caused by the rain and is regular wear and tear.

The landlord said the total expense for painting and the mould treatment was \$2,835.00 and the tenant is responsible for 40% of the painting expenses. The landlord does not know how much was paid for the painting and for the mould treatment individually, as the invoice is for both painting and mould treatment.

## 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.

## Unpaid rent

Based on both parties undisputed testimony and the tenancy agreement, the tenants agreed to pay monthly rent in the amount of \$2,306.25 and paid only \$1,181.25 for September 2020 rent. 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.

In accordance with section 26(1) of the Act the tenants owe the landlord \$1,125.00 for the balance of September 2020 rent.

### Cleaning

Regulation 21 states:

Evidentiary weight of a condition inspection report

21 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.

I find the testimony of the tenant does not outweigh the evidentiary value of the signed form.

Section 37(2)(a) of the Act states: "When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear".

Based on the landlord's testimony and the form, I find the tenants breached section 37(2)(a) of the Act by not cleaning the rental unit and the landlord suffered a loss because of the tenants' failure to comply with the Act.

Residential Tenancy Branch Policy Guideline 05 explains the duty of the party claiming compensation to mitigate their 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.

Based on the tenant's undisputed testimony, I find the landlord only cleaned the rental unit on November 02, 2020, 35 days after the tenants moved out. I find the landlord did not minimize her losses by waiting 35 days to clean the rental unit, the rental unit got dirtier and it was harder to clean it because of the delay in cleaning. As such, I find it reasonable to reduce the cleaning costs by 30%.

Thus, I award the landlord \$180.08 (\$257.27-30%) in compensation for cleaning expenses.

#### Painting and mould

Residential Tenancy Branch Policy Guideline 1 states:

##### Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

**2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.**

**3. The tenant is responsible for all deliberate or negligent damage to the walls.**

##### 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.**

**(emphasis added)**

Based on the report and the landlord's testimony, I find the tenants breached section 37(2)(a) of the Act by not painting the walls that were damaged during the tenancy and the landlord suffered a loss because of the tenants' failure to comply with the Act.

Residential Tenancy Branch Policy Guideline 40 states the useful life of interior painting is 4 years. The paint was 2 years old when the tenancy ended.

The landlord did not submit into evidence a detailed invoice for the painting costs. The landlord's testimony about the painting cost was vague and not convincing. Considering the size of the rental unit, the age of the painting when the tenancy ended, the landlord's testimony and the report, I find it reasonable to award the landlord \$300.00 for painting expenses.

Residential Tenancy Branch Policy Guideline 01 states: "The tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, **including removing mould.**"(emphasis added)

Based on both parties undisputed testimony, I find the tenants breached section 37(2)(a) of the Act by not removing the mould in the living room and the landlord suffered a loss because of the tenants' failure to comply with the Act.

The landlord did not submit into evidence a detailed invoice for the mould treatment. The landlord's testimony about the mould treatment cost was vague and not convincing. I find it reasonable to award the landlord \$250.00 for mould treatment.

Thus, I award the landlord \$550.00 in compensation for painting expenses and mould treatment.

### Deposit

Section 38 of the Act requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

The parties agreed the forwarding address was provided in writing on September 28, 2020 and that the tenancy ended on September 30, 2020. The landlord brought an application for dispute resolution on October 14, 2020, within the timeframe of section 38(1) of the Act.

Residential Tenancy Branch Policy Guideline 17 states:

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.

The landlord is authorized to retain the \$1,325.00 deposits in partial satisfaction of the monetary award.

For the purpose of educating the landlord, I note that under section 19(1) of the Act, a landlord is not permitted to accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement, thus the value of the security deposit accepted by the landlord was unlawful.

#### Filing fee and summary

As the landlord was partially successful in her claim, I authorize her to recover the \$100.00 filing fee.

In summary, the landlord is entitled to:

<b>Expenses</b>	<b>\$</b>
Balance of September 2020 rent	1,125.00
Cleaning	180.08
Painting and mould treatment	550.00
Filing fee	100.00
Sub Total	1,955.08
Minus deposits	1,125.00
<b>Total</b>	<b>830.08</b>

#### Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain the \$1,325.00 deposits and grant the landlord a monetary order in the amount of \$830.08.

The landlord is provided with this order in the above terms and the tenants must be served with this order. 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: February 11, 2021