



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

For the landlords: MNDL-S, FFL

For the tenants: MNSD, MNETC, FFT

### **Introduction**

This hearing dealt with a cross application. The landlords' application pursuant to the Residential Tenancy Act (the Act) is for:

- a monetary order for compensation for damage and loss under the Act, the Regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenants' security deposit (the deposit), pursuant to section 38; and
- an authorization to recover the filing fee for this application, under section 72.

The tenants' application pursuant to the Act is for:

- an order for the landlords to return the deposit, pursuant to section 38;
- a monetary order in the amount of the monthly rent payable under the tenancy agreement, pursuant to section 51(1); and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. Witness GB for the tenants also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

### **Issues to be Decided**

Are the landlords entitled to:

1. a monetary order for compensation for damage and loss?
2. an authorization to retain the tenants' deposit?
3. an authorization to recover the filing fee for this application?

Are the tenants entitled to:

1. an order for the landlords to return the deposit?
2. a monetary order in the amount of the monthly rent payable under the tenancy agreement?
3. 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 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 their obligation to present the evidence to substantiate their claims.

Both parties agreed the tenancy started in August 2014 and ended on October 01, 2020 at 4:00 P.M. Rent was \$1,100.00 per month, due on the first of the month. At the outset of the tenancy a security deposit of \$450.00 was collected and the landlords hold it in trust. The tenancy agreement was submitted into evidence. The landlord purchased the rental unit on May 01, 2017.

The tenant affirmed he served the forwarding address by registered mail on October 22, 2020 (the tracking number is on the cover page of this application). The landlord confirmed receipt of the forwarding address on October 29, 2020. The landlords' application was filed on November 11, 2020.

Both parties agreed there was no move in inspection. A condition inspection report (the report), signed by both parties on October 01, 2020, was submitted into evidence. It states:

I [tenants] do not agree that this report fairly represents the conditions of the rental unit for the following reasons: We forgot to empty the bins and also the windows. We don't agree the rest of the damage described.

Both parties also agreed the rental unit is a 2-bedroom, 800 square feet house built in the 1940s or 1950s.

The landlord is claiming for cleaning expenses in the amount of \$13.41 for disinfectant and 5 hours of labour at \$30.00 per hour (items 1 and 6 in the monetary order worksheet). The landlord stated the tenants left mould on the walls, the hood ventilator was not clean, the bathtub and the kitchen cabinets needed to be disinfected. The

tenant affirmed he cleaned the house when the tenancy ended, but he forgot to clean the hood ventilator and there was mould on the walls “from time to time”.

The report indicates: “vent not cleaned”, “dirty cabinets”, and “Cleaning of walls and mould, replace caulk, possibly washer, cleaning out vent cover, blinds, windows, empty recycling and garbage”.

The landlord submitted into evidence 17 photographs showing dirty cabinets and the kitchen hood ventilator and a receipt in the amount of \$13.41 for the disinfectant. The tenants submitted into evidence a video showing the interior of the house clean on the move out date. Witness GB testified the house was poorly built, when the tenancy ended it was spotlessly clean, the walls, kitchen cabinets and cupboards were clean.

The landlord is claiming for a caulking gum and smoother in the amount of \$36.64 and 1 hour of labour at \$16.00 for the caulking service (items 2, 3 and 8 of the monetary order worksheet). The landlord stated the tenant left water in the bathroom tiles by the bathtub and this caused mould. The landlord submitted into evidence a receipt in the amount of \$36.64 and 3 photographs showing the bathtub area. The report indicates mould in the bathroom. Witness GB testified there was no mould and the bathtub was clean.

The landlord is claiming for window coverings repair in the amount of \$20 (item 4 in the monetary order worksheet). The landlord said the tenants damaged the window coverings in the bedroom. The landlord estimates the repair will cost \$20.00. The tenant stated the window coverings are old, have regular wear and tear and already had wear and tear when the tenancy started in 2014. Witness GB testified: “I did not see any damage on the blinds. I may have missed it, but I did not see one damaged blind”. The landlord submitted into evidence 3 photographs of damaged window coverings. The report indicates mould on the bedroom window covering track and damaged window coverings in the second bedroom.

The landlord is claiming for the replacement of the washing machine door water seal in the amount of \$154.54 and 2 hours of labour at \$25.00 (items 5 and 7 of the monetary order worksheet). The landlord testified the tenant did not clean the washing machine and because of the poor cleaning black mould grew on the door water seal. The landlord submitted into evidence 2 photographs of the washing machine door and an estimate of the water seal in the amount of “\$129.95 plus tax”. The tenant affirmed the washing machine has been used since when the tenancy started and there was mould on the washing machine door water seal when the tenancy started. The report indicates mould in the washing machine.

The total amount the landlord is claiming is \$431.59.

Both parties agreed a two month notice to end tenancy for landlord's use (the Notice) was served on August 28, 2020. A copy of the Notice was submitted into evidence. The effective date is October 31, 2020.

Both parties also agreed the tenant paid rent in September, served a ten day notice to end tenancy on September 20, 2020 and the landlord paid the tenant the amount of \$1,029.03 on November 03, 2020 for compensation as required by the Notice. The landlord stated he subtracted two days because the tenant left the rental unit at 4:00 P.M. on October 01, 2020 instead of 1:00 P.M. on September 30, 2020.

The tenant is claiming for the *pro rata* 2 day rent subtracted by the landlord and the return of the deposit.

### 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.

Cleaning expenses (items 1 and 6 in the landlord's monetary worksheet)

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"

The testimony of the parties regarding the cleanliness of the rental unit when the tenancy ended is conflicting, except for the condition of the hood ventilator and mould on the walls. The tenant's witness stated the rental unit was spotlessly clean when the tenancy ended. The landlord did not have a witness.

The landlords have not met the burden to prove, on a balance of probabilities, that the other areas of the rental unit were not reasonably clean when the tenancy ended.

Based on both parties testimonies, I find the tenant breached section 37(2)(a) of the Act by not cleaning the hood ventilator and mould on walls when the tenancy ended.

I find the landlord's testimony that he spent 6 hours cleaning the rental unit was vague. I find it reasonable to award 2 hours of cleaning at \$30.00 for cleaning costs and \$13.41 for the disinfectant.

As such, I award the landlords \$73.41 in compensation for cleaning expenses.

Caulking (items 2,3, and 8 in the landlord's monetary worksheet)

The testimony of the landlord and the tenant's witness regarding mould on the bathroom tiles is conflicting. The landlord's photographs and the tenants' video are also conflicting. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim (in this case the landlords) has not met the burden on a balance of probabilities and the claim fails. The landlord did not have a witness.

I find the landlords have not proved, on a balance of probabilities, that the tenants failed to comply with the Act of the tenancy agreement.

Thus, I dismiss the landlords' application for compensation for caulking.

Window coverings (item 4 in the landlord's monetary worksheet)

The testimony of the parties regarding the conditions of the window coverings is conflicting. The landlord did not provide evidence about the conditions of the windows coverings when the tenancy started.

I find the landlords have not proved, on a balance of probabilities, that the tenants failed to comply with the Act or tenancy agreement and damaged the windows coverings.

Thus, I dismiss the landlords' application for compensation for windows coverings.

Washing machine seal (items 5 and 7 in the landlord's monetary worksheet)

The testimony of the parties regarding the conditions of the washing machine is conflicting. The landlord did not provide evidence about the conditions of the washing machine when the tenancy started.

I find the landlords have not proved, on a balance of probabilities, that the tenants failed to comply with the Act or tenancy agreement and damaged the washing machine seal.

Thus, I dismiss the landlords' application for compensation for the washing machine seal.

One month compensation (tenant's claim 1)

Section 51(1) of the Act states a tenant is entitled to a compensation in the amount of one month rent when a two month notice to end tenancy is served.

Section 37 of the Act states a tenant must vacate the rental unit by 1 P.M. on the day the tenancy ends.

As the tenants only vacated the rental unit at 4:00 P.M. on October 01, 2020, they must pay rent until October 02, 2020. The *pro rata* rent was \$36.66 per day (\$1,100.00 divided by 30). The landlord had to compensate the tenants with \$1,026.67 (\$1,100.00 subtracted \$73.33). As the tenants received the amount of \$1,029.03, they are not entitled to any further compensation under section 51(1) of the Act.

Thus, I dismiss the tenants' application for compensation under section 51(1) of the Act.

### Deposit

Section 23(1) of the Act states the landlord and tenant must inspect the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. Section 23(3) required the landlord to offer the tenant at least 2 opportunities for the inspection.

Section 24(2) states:

The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord  
(a) does not comply with section 23 (3) [2 opportunities for inspection],

Residential Tenancy Branch Policy Guideline 17 states the landlord extinguishes the right to retain or file a claim against a deposit if:

7. The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if9:

- **the landlord does not offer the tenant at least two opportunities for inspection as required**<sup>10</sup> (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity);  
[...]

9. **A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:**

to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;

- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;

- **to file a claim against the deposit for any monies owing for other than damage to the rental unit;**

- to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy;  
and

- to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

[emphasis added]

Section 38(1) of the Act requires the landlord to either return the tenants' 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 tenant mailed the forwarding address on October 22, 2020. Per section 90(a) of the Act, the landlords are deemed to have received the forwarding address on October 27, 2020. The landlords brought an application for dispute resolution on November 11, 2020, within the timeframe section of section 38(1) of the Act.

Section 38(6) of the Act requires the landlord to pay double the deposit if the landlord does not comply with section 38(1):

- (6) If a landlord does not comply with subsection (1), the landlord
  - (a) may not make a claim against the security deposit or any pet damage deposit, and
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Residential Tenancy Branch Policy Guideline 17 states the tenant is entitled to double the deposit if the landlord claimed against the deposit when his right to do so has been extinguished under the Act:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

[...]

- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

As both parties agreed there was no move in inspection, the landlord lost the right to claim against the deposit and must pay double the deposit, per sections 24(2) and 38(6) of the Act.

Thus, I award the tenants \$900.00 (double \$450.00 deposit). Over the period of this tenancy, no interest is payable on the landlord's retention of the deposit.

#### Filing fee and summary

As both parties were partially successful with their applications, each party will bear their own filing fee.

Residential Tenancy Branch Policy Guideline 17 sets guidance for a set-off when there are two monetary awards:



1. Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order.

2. 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.

In summary:

Award for the tenants – double deposit	\$900.00
Award for the landlords – cleaning expenses	\$73.41
<b>Final award for the tenants</b>	<b>\$826.59</b>

### Conclusion

Pursuant to sections 38 and 67 of the Act, I authorize the landlords to retain \$73.41 from the tenants' deposit in total satisfaction of losses incurred and grant the tenants a monetary award pursuant to section 38 of the Act in the amount of \$826.59.

The tenants are provided with this order in the above terms and the landlords must be served with this order. Should the landlords 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: March 15, 2021

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Residential Tenancy Branch