



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNDCL-S, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and provided undisputed affirmed evidence. The landlord stated that the tenant was served with the notice of hearing package and the 41 submitted documentary evidence via Canada Post Registered Mail on November 18, 2020. The landlord clarified that the mailing address used was obtained using a "skip tracer" who had investigated the tenant and located him at this address. The landlord also submitted a copy of the Canada Post Tracking label as confirmation (the number noted on the cover of this decision). The landlord stated that the package was returned by Canada Post marked as "Refused". The landlord also stated written on the envelope that it stated, "does not live here". The landlord upon receipt of the package travelled to the address and found the tenant's vehicle parked in front of the address. The landlord then left another copy of the hearing package posted to the door. I find on a balance of probabilities that the mailing address used by the landlord was the valid address of the tenant despite the notation on the returned Canada Post Package. I find based upon the above undisputed affirmed evidence of the landlord that the tenant was served via Canada Post Registered Mail with the notice of hearing package and the submitted documentary evidence as claimed. Despite not

attending the hearing, the tenant is deemed served via the Registered Mail as per section 90 of the Act. I find that the tenant is attempting to evade service.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for money owed or compensation and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security and/or pet damage deposits?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on July 1, 2011 on a fixed term tenancy ending on June 30, 2012 and then thereafter on another fixed term as per the submitted copy of the signed tenancy agreement dated June 4, 2011. The monthly rent began at \$1,850.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$925.00 and a pet damage deposit of \$925.00 were paid.

The landlord stated that at the end of tenancy the monthly rent was \$1,970.00. The landlord relies upon the submitted copy of a "Cheque Returned/Rejected Advice" dated August 6, 2020 which the landlord claims is the tenant's rent cheque returned (made out from a numbered company) from the bank as "insufficient funds" in the amount of \$1,970.00.

During the hearing the landlord's claim regarding recovery of the \$288.75 "skip tracer" claim was dismissed. The landlord had clarified that this service was used to locate the tenant as the tenant had failed to provide a proper forward mailing address. This claim was clarified to the tenant as a cost associated as part of litigation costs and was not recoverable. The Act only provides for recovery of the filing fee.

During the hearing the landlord clarified that he was removing one of the claims for \$1,164.00 listed as item #10, Garbage/Ceiling Repair. The landlord stated that this was included in error and wished to remove it. On this basis, the Landlord's claim is amended to remove this item.

The landlord seeks an amended monetary claim of \$9,187.83 which consists of:

\$360.00	Cleaning Services
\$200.00	Cleaning Services 2
<del>\$288.75</del>	<del>Skip Tracing</del>
\$2,567.71	New Flooring
\$334.88	Floor Levelling
\$2,677.50	Floor Labor
\$1,680.00	Repaint and Wall Repairs
\$1,050.00	Repaint and Wall Repairs
\$317.74	Pro-rated Rent, 5 days
<del>\$1,164.00</del>	<del>Garbage, Ceiling Repair</del>
 \$9,187.83	 Amended Total

The landlord claims that the tenant vacated the rental unit leaving it damaged and dirty requiring extensive repairs, painting, floor replacement and cleaning.

The landlord stated that upon gaining possession of the rental unit the landlord discovered it extensively dirty with animal feces and urine and damage to the flooring and walls from water/urine and damage caused by the pets. The landlord engaged a cleaning service at a cost of \$360.00 and discovered afterwards that further services were required. The landlord stated that a second cleaning service was required at a cost of \$200.00 because of the extensive nature of the urine/feces left throughout the rental unit. The landlord submitted in support of these two cleaning claims copies of the invoice(s)/receipts dated July 24, 2020 and August 5, 2020.

The landlord stated that he was forced to replace the flooring due to extensive water/urine damage. The landlord stated that it was so severe the flooring and sub-floor were "spongy" meaning the wood supports needed to be replaced and leveled out at a cost of \$334.88. The landlord submitted in support of this claim a copy of the invoice/receipt dated July 13, 2020.

The landlord also seeks recovery of new flooring cost(s) of \$2,567.41, installation cost(s) of \$2,677.50 and Repaint and Wall Repair for \$1,680.00. The landlord submitted an invoice for each of these claims. Wall repairs and painting cost(s) as per a submitted copy of the invoice. The landlord stated that the new flooring and labor costs were incurred due to the damaged flooring left by the tenant. During the hearing a review of each of these invoice(s) show that an itemized description for each are the same. It states in part,

1. install flooring
2. garbage & remove baseboard
3. install baseboard & painting
4. ceiling repair
5. install fence

This description on each of these separate invoice(s) describe the same work performed, but each with a different monetary total. The invoice titled "FloorCosts" states a total for \$2,567.71 dated July 13, 2020 for invoice #51331; invoice titled, "Floorlabor" states a total for \$2,677.505 dated June 26, 2020 for invoice #050; the invoice titled, "MinorRepairs" which the landlord clarified was for wall repair and painting shows a total for \$1,764.00 dated August 4, 2020 for invoice #050.

The landlord had clarified during the hearing that he had negotiated a total set price for the repairs of all of the included described items, but that the landlord would be paying in installments for each phase of repairs. The landlord stated that each of the invoice amounts were paid to the contractor as they were completed.

The landlord has submitted in support of these claims 23 photographs of the damage and condition of the rental unit but has only referenced 3 files named "Cat Rubbings", "Cat Rubbing1" and "Cat Urine Ceiling". A review of these photographs show based upon the landlord's description damage caused to the corner of walls by the cat rubbing against it causing the dark spots. The landlord stated that in these areas the drywall has lifted and had to be replaced and the entire wall repainted to match.

The landlord also seeks compensation for loss of rent of \$317.74 based upon a pro-rated amount for the 5 days at the monthly rent of \$1,970.00 divided by the 31 days of the month. The landlord stated that the tenant overhauled the rental unit causing him to suffer a loss of rent for these 5 days.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual

monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the undisputed affirmed evidence of the landlord and find that the tenant vacated the rental unit leaving it dirty and damaged with animal feces and urine damaging the walls and flooring. I accept the landlord's evidence that the floor damage was so extensive with water/urine damage that the wood flooring and subfloor had to be replaced. I also find that the damage caused by "Cat Rubbings" of the tenant's pets caused the drywall damaged which had to be repaired and the walls painted. On this basis, I find that the landlord has established a claim for the amended monetary amount of \$9,187.83 as detailed above.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$925.00 security and the \$925.00 pet damage deposits in partial satisfaction of the claim.

### Conclusion

The landlord is granted a monetary order for \$7,437.33.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the 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 03, 2021

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Residential Tenancy Branch