



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlords attended and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlords testified that they served each of the tenants with the notice of application, evidence and substituted service order by email sent on December 22, 2020 in accordance with the substituted service order of December 15, 2020. The landlord provided screenshots of the sent items and confirmation of delivery receipt by each of the tenants as evidence of service. Based on the evidence I find that each of the tenants is deemed served with the landlords' materials on December 25, 2020, three days after mailing, in accordance with the substituted service order of December 15, 2020 and sections 88, 89 and 90 of the *Act*.

At the outset of the hearing, the landlords made an application requesting to amend the monetary amount of the claim sought. The landlords indicated that since the application was filed they have received a more accurate assessment of the damage to the rental unit. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as the monetary amount of damages changing when more accurate information is obtained is reasonably foreseeable, I amend the landlords' Application to increase the landlords' monetary claim from \$4,463.34 to \$5,363.34.

### Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?  
Are the landlords entitled to retain the deposit for this tenancy?  
Are the landlords entitled to recover the filing fee from the tenants?

### Background and Evidence

The landlords provided undisputed evidence on the following facts. This periodic tenancy began in December 2019 and ended sometime in November 2020. The monthly rent was \$1,500.00 payable on the first of each month. The tenants are also responsible for paying utilities for the rental suite. A security deposit of \$750.00 was collected and is still held by the landlords.

The landlords submit that the tenants failed to pay the full rent and utilities pursuant to the tenancy agreement and that there is a rental and utility arrear for this tenancy.

The landlords say that the tenants abandoned the suite without agreeing to a time for a move-out inspection despite being offered multiple opportunities. The landlords submitted into evidence copies of correspondence where they attempt to schedule a move-out inspection with the tenants as required under the Act. The landlords submit that the rental unit required considerable repairs, maintenance, cleaning and work due to the state left by the tenants. The landlord submitted the condition inspection report prepared for the tenancy, photographs of the suite and various invoices and estimates for the work.

The landlords submit that the total cost of the supplies, work, rental and utility arrear is \$5,263.34.

### 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.

I accept the undisputed evidence of the landlords that the tenants failed to pay the full rent and utilities payable under the tenancy agreement. I further accept the evidence that the rental unit was left poor condition requiring considerable expense to restore it to its pre-tenancy condition. Based on the evidence including the testimonies, photographs of the suite and the invoices submitted I am satisfied that the work done by the landlords was reasonable and commensurate with the damage to the suite.

I accept the evidence that the total losses and costs incurred by the landlords is \$5,263.34. Accordingly, I issue a monetary award in the landlords' favour in that amount.

As the landlords were successful in their application they are also entitled to recover the filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlords' favour

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$4,613.34, allowing for the recovery of the unpaid rent and utilities, the damages and loss and to retain the security deposit for this tenancy. The tenants must be served with this Order as soon as possible. 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: March 15, 2021

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Residential Tenancy Branch