



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES and  
[tenant name suppressed to protect privacy]

## **DECISION**

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

### Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 19 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the vice president for the landlord company named in this application and that she had permission to speak on its behalf.

At the outset of the hearing, I informed the landlord that she was not permitted to record the hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. During the hearing, the landlord affirmed under oath that she was not recording the hearing.

The landlord stated that the tenant was served with the landlord's application for dispute resolution, notice of hearing, and first evidence package on December 27, 2020, by way of registered mail to the forwarding address provided by the tenant on the move-out condition inspection report on December 12, 2020. The landlord provided a Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on January 1, 2021, five days after its registered mailing.

The landlord stated that the tenant was served with the landlord's second evidence package on March 25, 2021, by way of registered mail to the forwarding address provided by the tenant on the move-out condition inspection report on December 12, 2020. The landlord provided a Canada Post tracking number verbally during the hearing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's second evidence package on March 30, 2021, five days after its registered mailing.

During the hearing, the landlord confirmed that she was no longer seeking a monetary order of \$30.00 to replace a mailbox key because the landlord did not provide a receipt for same. Accordingly, this portion of the landlord's application is dismissed without leave to reapply.

#### Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent, for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee paid for this application?

#### Background and Evidence

The landlord testified regarding the following facts. This tenancy began on November 1, 2019 and ended on December 12, 2020. Monthly rent in the amount of \$875.00 was payable on the first day of each month. A security deposit of \$437.50 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. The tenant refused to sign the move-out condition inspection report because she disagreed with the costs. The landlord obtained the tenant's forwarding address on the move-out condition inspection report on December 12, 2020. The landlord did not have written permission from the tenant to keep any part of her security deposit. The landlord's application to retain the security deposit was filed on December 18, 2020.

The landlord seeks a monetary order of \$3,404.00 plus the \$100.00 application filing fee.

The landlord stated the following facts. The landlord seeks unpaid rent of \$2,950.00. The tenant did not pay rent of \$875.00 for each month of May, July, August, and December 2020, totalling \$3,500.00. The tenant made partial rent payments on a repayment plan of \$262.00 on October 13, 2020, and \$263.00 on November 6, 2020, totalling \$525.00. The landlord seeks a late fee of \$25.00 for November 2020 because the tenant paid rent late on November 5, 2020. The landlord seeks \$240.00 to clean the rental unit because the tenant left garbage and a dirty condition when she vacated. The landlord initially estimated \$300.00 for this cost but amended to reduce it to \$240.00 at this hearing to reflect the actual cost as per the invoice. The landlord provided the invoice, which was paid in full, as well as photographs of the condition of the unit when the tenant vacated. The landlord seeks \$189.00 to clean the carpet at the rental unit because the tenant did not do so, as per the photographs provided by the landlord. The landlord provided an invoice, which was paid in full. The tenant did not agree with the above costs, so she did not sign the move-out condition inspection report.

### Analysis

#### Rent

As per section 26 of the *Act*, the tenant is required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant failed to pay rent to the landlord, totalling \$2,950.00, for May, July, August and December 2020. Therefore, I find that the landlord is entitled to \$2,950.00 total in unpaid rent from the tenant. This cost was also included on the move-out condition inspection report.

#### Late Fee

Section 7 of the *Residential Tenancy Regulation* states the following, in part:

*Non-refundable fees charged by landlord*

*7(1) A landlord may charge any of the following non-refundable fees:*

*(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;*

*(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.*

I find that the landlord provided undisputed evidence that the tenant failed to pay a late rent fee of \$25.00 for November 2020 to the landlord. Accordingly, I award the landlord \$25.00 for a November 2020 late fee. The \$25.00 fee is indicated in the parties' written tenancy agreement at paragraph 12 on page 2 of the "rent arrears" section. This cost was also included on the move-out condition inspection report.

### Cleaning

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of the landlord.

I award the landlord \$240.00 to clean the rental unit. The landlord provided an invoice for this cost. The landlord provided affirmed testimony that this invoice was paid in full by the landlord. The landlord provided photographs showing that the rental unit was not cleaned when the tenant vacated. The landlord noted that cleaning was required on the move-out condition inspection report and included an estimated cost of \$300.00, which was reduced to \$240.00 to reflect the actual invoice cost paid. Residential Tenancy Policy Guideline 1 requires the tenant to clean the rental unit when she vacates, which was not done in this case.

I award the landlord \$189.00 to clean the carpet at the rental unit. The landlord provided an invoice for this cost. The landlord provided affirmed testimony that this invoice was paid in full by the landlord. The landlord provided photographs showing that the carpet was not cleaned and was heavily stained when the tenant vacated. The landlord noted that carpet cleaning was required on the move-out condition inspection report and included the cost of \$189.00. Residential Tenancy Policy Guideline 1 requires the tenant to steam clean or shampoo the carpet before vacating the rental unit, for a tenancy of at least one year, which was not done in this case.

The landlord continues to hold the tenant's security deposit of \$437.50. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit of \$437.50 in partial satisfaction of the monetary award. No interest is payable on this deposit over the period of this tenancy.

As the landlord was mainly successful in this application, I find that the landlord is entitled to recover the \$100.00 application filing fee from the tenant.

### Conclusion

I order the landlord to retain the tenant's entire security deposit of \$437.50.

I issue a monetary order in the landlord's favour in the amount of \$3,066.50 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant 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.

The landlord's application for a monetary order of \$30.00 to replace a mailbox key is dismissed without leave to reapply.

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: April 29, 2021

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Residential Tenancy Branch