



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDL-S, FFL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on February 21, 2021 (the “Application”). The Landlords applied as follows:

- To recover unpaid rent
- For compensation for damage to the rental unit
- To keep the security deposit
- For reimbursement for the filing fee

The Application originally named the Tenant and Tenant D.C. (the “Tenants”).

The Landlords appeared at the hearing. The Tenant appeared at the hearing with the Witness who was not involved in the hearing until required. The Tenant did not appear for Tenant D.C. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Tenant provided her correct legal name which is reflected in the style of cause.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Tenant confirmed receipt of the hearing package and Landlords’ evidence. The Landlords confirmed receipt of the Tenant’s evidence.

The Landlords advised that Tenant D.C. was not served with the hearing package.

The Landlords were required to serve Tenant D.C. with the hearing package pursuant to section 59(3) of the *Residential Tenancy Act* (the “Act”) and rule 3.1 of the Rules. Given

the Landlords did not serve the hearing package on Tenant D.C., the Landlords cannot proceed against Tenant D.C. and he has been removed from the Application.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Are the Landlords entitled to recover unpaid rent?
2. Are the Landlords entitled to compensation for damage to the rental unit?
3. Are the Landlords entitled to keep the security deposit?
4. Are the Landlords entitled to reimbursement for the filing fee?

### Background and Evidence

The Landlords sought the following compensation:

Item	Description	Amount
1	Rent	\$750.00
2	Cleaning	\$75.00
3	Sewer blockage	\$635.00
4	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$1,560.00</b>

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started May 01, 2020 and was a month-to-month tenancy. The parties agreed rent was \$1,500.00 per month. Rent was due on the first day of each month. The Tenants paid a \$700.00 security deposit.

The parties agreed the tenancy ended February 13, 2021.

The Tenant testified that the Tenants provided the Landlords with a forwarding address in writing over Facebook messenger a few days after moving out.

The Landlords testified that the Tenants agreed verbally to them keeping the security deposit. The Tenant denied this.

The parties agreed they did a “verbal and physical” walk-through but did not do a Condition Inspection Report at move-in.

The Landlords testified that they attempted to do a move-out inspection. The parties agreed they met at the end of the tenancy with the intention of doing a move-out inspection; however, things “got heated” between the parties and no Condition Inspection Report was done.

The Landlords submitted a “MOVE OUT CLEANING CHECKLIST”. The Landlords confirmed the MOVE OUT CLEANING CHECKLIST was done by them alone the day of move-out and the following day.

***#1 Rent \$750.00***

The Landlords testified that the Tenant paid all of February rent and that they are seeking to keep what was paid because the Tenant asked for half of February rent back.

The Tenant confirmed she is seeking half of February rent back.

***#2 Cleaning \$75.00***

The Landlords testified that the rental unit was not reasonably clean at the end of the tenancy and relied on the MOVE OUT CLEANING CHECKLIST and photos.

The Landlords testified that the central vacuum system was plugged, the carpet was stained, the deck was dirty and there was food on the ceiling and drapes.

The Landlords testified that it took five hours of work to clean out the central vacuum system. The Landlords testified that they hired a cleaner for four hours at \$30.00 per hour. The Landlords testified that they also spent hours cleaning including cleaning the carpet.

The Tenant testified that she cleaned the rental unit at the end of the tenancy. The tenant testified that there was a red stain on the ceiling from a toy the Landlords gave her children. The Tenant testified that she swept the deck.

### **#3 Sewer blockage \$635.00**

The Landlords testified about a blockage in the pipes that occurred during the tenancy. The Landlords testified that they had a plumber attend to clear the blockage. The Landlords testified that the blockage could only have come from one of the two toilets in the rental unit. The Landlords testified that only the Tenants could have caused the blockage. The Landlords testified that the toilet worked for many years prior to the Tenants living in the rental unit and has worked since. The Landlords testified that there was a history of toys being put down the toilet while the Tenants were living in the rental unit.

The Tenant submitted that there is no proof that the Tenants caused the sewer blockage. The Tenant referred to the report from the plumber in relation to the items found in the pipes and testified that these items did not come from the Tenants.

### ***Witness***

The Witness provided the following relevant testimony in answer to questions from the parties.

She thought the rental unit was really clean at the end of the tenancy. Her employment involves dealing with insurance claims for things such as sewer backups. She read the plumber's report about the blockage in the rental unit. The report mentions an illegal hookup. The way the pipes were installed is likely the reason for the blockage. She is not a certified plumber.

I note that Landlord S.M. asked the Witness numerous questions about whether areas of the rental unit were dirty at the end of the tenancy and the Witness testified that these areas were not dirty. The Witness acknowledged the walls were not perfect at the end of the tenancy but that any issues were normal wear and tear.

### **Analysis**

### ***Security deposit***

I do not accept that the Tenants verbally agreed to the Landlords keeping the security deposit as the parties disagreed about this. I would expect such an agreement to be in writing given the importance of dealing with a security deposit at the end of a tenancy.

In the absence of further evidence to support that there was a verbal agreement that the Landlords could keep the security deposit, I am not satisfied there was.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of the parties regarding the move-in and move-out inspections, I do not find that the Tenants extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlords extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage to the rental unit and the Landlords have claimed for rent and cleaning.

Based on the testimony of both parties, I find the tenancy ended February 13, 2021.

I accept the testimony of the Tenant that the Tenants provided the Landlords with a forwarding address in writing over Facebook messenger a few days after moving out.

Pursuant to section 38(1) of the *Act*, the Landlords had 15 days from the later of the end of the tenancy or the date the Landlords received the Tenants’ forwarding address in writing to repay the security deposit or claim against it. The Application was filed February 21, 2021, within 15 days of the end of the tenancy. I find the Landlords complied with section 38(1) of the *Act* regardless of when the forwarding address was received.

### ***Compensation***

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

Pursuant to rule 6.6 of the Rules, it is the Landlords as applicants who have the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

### **#1 Rent \$750.00**

I dismiss this claim without leave to re-apply. The Landlords are not owed half of February rent as the Tenant paid full rent for February. The Landlords are seeking to keep money they already have. This is not a request to recover unpaid rent as the rent was paid in full. The issue between the parties is that the Tenant wants half of February rent back. If the Tenant is seeking half of February rent back, the Tenant can file an Application for Dispute Resolution seeking this. The issue of whether the Tenant is entitled to compensation is not before me on the Application.

**#2 Cleaning \$75.00**

Section 37 of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

The Landlords testified that the rental unit was not reasonably clean at the end of the tenancy. The Tenant testified that the rental unit was cleaned at the end of the tenancy and the Tenant called the Witness to support this position.

Given the conflicting testimony on this point, I have considered the documentary evidence before me.

The relevant documentary evidence before me includes photos of the rental unit taken by the Tenant, photos of the rental unit taken by the Landlords and the MOVE OUT CLEANING CHECKLIST completed by the Landlords.

The Tenant has submitted a copy of the MOVE OUT CLEANING CHECKLIST with notations on it disagreeing with it. I do not find the MOVE OUT CLEANING CHECKLIST to be compelling evidence of the state of the rental unit at the end of the tenancy given the Landlords completed this themselves and therefore it simply reflects their opinion and does not add to their testimony.

In the circumstances, I have considered the photos submitted by each party to determine the state of the rental unit at the end of the tenancy. I find the photos to be the most reliable evidence.

The Landlords' photos show the following:

- Some marks on walls and the ceiling
- Some staining on the carpets
- The side of the dishwasher being dirty
- Some marks on a cupboard
- Toys located in the central vacuum system
- Dirty ceiling lights
- Dirt on the deck

The Tenant's photos show that the rental unit was reasonably clean. However, the Tenant's photos do not show:

- The dishwasher
- The cupboards
- The deck
- Close up of ceiling lights

Further, the Tenant has not provided documentary evidence about the central vacuum system.

In the circumstances, I am satisfied the following areas required further cleaning:

- The side of the dishwasher
- Some marks on a cupboard
- The central vacuum system
- Ceiling lights
- Deck

Although I find the side of the dishwasher and marks on cupboards to be minor issues, I do accept that cleaning out the central vacuum system, cleaning ceiling lights and cleaning the deck are more substantial issues and would take some time. The Landlords have sought \$75.00 which is the cost of three hours of cleaning at the usual rate of \$25.00 per hour. I find this amount reasonable and award the Landlords this amount.

### **#3 Sewer blockage \$635.00**

Section 32 of the *Act* states:

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

The issue between the parties is whether the Tenants caused the sewer blockage in the rental unit. The parties disagree on this point. Therefore, I have considered the documentary evidence before me in relation to this point.



The relevant documentary evidence before me includes emails from the plumbing company with photos attached submitted by the Landlords and an invoice from the plumber with a description of the work done submitted by the Tenant.

I accept based on the email dated February 04, 2021 that the plumber found “human waste, family planning products, dirt, hair and debris” in the pipes. I also accept that the plumber was unable to give a timeline of when these items were placed in the drain as stated in the email.

I accept the following based on the invoice from the plumber. Two upstairs toilets were backing up. The bathrooms “are connected by a double cross Tee and this makes servicing difficult if not impossible.” The plumber found “a misaligned pipe and standing water issues because of the existing drainage issues”.

This is the Landlords’ Application and their onus to prove. I find the documentary evidence suggests that there were issues with the plumbing that were not caused by the Tenants. Further, the documentary evidence does not clearly show or state that the Tenants caused the blockage. In the circumstances, I am not satisfied the Tenants caused the blockage and therefore am not satisfied they are responsible for the cost of fixing the blockage.

#### **#4 Filing fee \$100.00**

Given the Landlords were partially successful in the Application, I award the Landlords reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

#### **Summary**

In summary, the Landlords are entitled to the following:

Item	Description	Amount
1	Rent	-
2	Cleaning	\$75.00
3	Sewer blockage	-
4	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$175.00</b>

The Landlords can keep \$175.00 of the security deposit pursuant to section 72(2) of the *Act*. The Landlords must return the remaining \$525.00 of the security deposit to the Tenant. The Tenant is issued a Monetary Order for this amount.

### Conclusion

The Landlords are entitled to \$175.00 and can keep this amount from the security deposit. The Landlords must return the remaining \$525.00 of the security deposit to the Tenant. The Tenant is issued a Monetary Order for this amount. If the Landlords do not return this amount, this Order must be served on the Landlords. If the Landlords fail to comply with this Order, it 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 *Act*.

Dated: April 29, 2021

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Residential Tenancy Branch