



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the *Residential Tenancy Act* (the “Act”) for a monetary order for damages or losses, for a monetary order for unpaid rent, permission to retain the security deposit and an order to recover the cost of filing the application. The matter was set for a conference call.

The Tenants and the Landlord attended the conference call hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The Tenants and the Landlord confirmed that they had received each other's documentary evidence. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

- Is the Landlord entitled to monetary order for unpaid rent and utilities?
- Is the Landlord entitled to monetary order for damage or losses?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that the tenancy began on November 1, 2019, as a one-year fixed-term tenancy that rolled into a month-to-month tenancy at the end of the initial fixed term. Rent in the amount of \$1,775.00 was to be paid by the first day of each month, and the Landlord collected an \$887.50 security deposit and an \$887.50 pet damage deposit for this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The parties agreed that the Tenants gave the Landlord written notice to end their tenancy on November 5, 2020, and that they moved out of the rental unit on December 2, 2020. The Landlord submitted a copy of the Tenants notice to end their tenancy into documentary evidence. The Landlord testified that they are requesting a monetary order in the amount of one month's rent, \$1,775.00, due to the short notice provided by the Tenants to end their tenancy.

When asked, the Landlord testified that they took no action to re-rent the rental unit after receiving the Tenants' notice to end their tenancy, as they were in the process of selling the rental unit and had decided not to re-rent.

The Landlord testified that the Tenants did not return the mailbox key for the rental unit at the end of this tenancy. The Landlord testified that they are requesting to recover \$20.00 in their costs to have a new mailbox key made for the rental unit. The Landlord submitted a copy of their receipt for the mailbox key into documentary evidence.

The Tenants agreed that they had lost the mailbox key during their tenancy, and that they owe the Landlord the cost of having a new key made.

The Landlord testified that when the Tenants returned the rental unit to the Landlord the fireplace was not working. The Landlord is requesting \$200.00 in their estimated costs to have the fireplace repaired.

When asked, the Landlord testified that they did not know what is wrong with the fireplace or what the Tenant may have done to cause it to not work but that it was not working at the end of the tenancy, so the Tenants are responsible for having it repaired.

The Tenant's testified that they never used the fireplace and have no idea why it is not working, but that they had not done anything to damage it during their tenancy.

The Landlord testified that the Tenants damaged a kitchen cabinet during their tenancy and that they are requesting \$450.00 to have the damaged cabinet replaced, consisting of \$250.00 for a new cabinet and \$200.00 in labour. When asked, the Landlord testified that the cabinet was at least 25-year-old when this tenancy began.

The Tenants agreed that the cabinet was damaged during their tenancy but that the damage was a small cut in the vinyl cover of the cabinet and that \$450.00 was too much for such a small bit of damage. Additionally, the Tenants also testified that the cabinet was very old and cheap and that they should not be responsible for buying the Landlord a brand new and better cabinet.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the agreed-upon testimony of these parties, supported by the documentary evidence submitted by the Landlord, that on November 5, 2020, the Tenants served the Landlord with written notice to end their tenancy as of December 2, 2020.

Section 45(1) of the Act states that a tenant can end a periodic tenancy (a month-to-month tenancy) agreement by giving the Landlord at least one full rental period's written notice that they intended to end the tenancy.

#### ***Tenant's notice***

*45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice, and*

*(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement*

Based on when the Tenants served their notice to the Landlord, I find that this tenancy could not have ended in accordance with the Act until December 31, 2020, and that that

the Tenants breached the *Act* when they issued short notice to the Landlord to end the tenancy as of December 2, 2020.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“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. 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.

In this case, I find that the Tenants’ breach of section 45 of the *Act* resulted in a loss of rental income to the Landlord and that the Landlord has provided sufficient evidence to prove the value of that loss. However, section 7(2) of the *Act* states the following regarding liability for a breach of this *Act*:

***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) 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.*

I accept the testimony of this Landlord, that they made no attempts to secure a new renter for the rental unit after receiving short notice from the Tenants to end this tenancy. Consequently, I find that the Landlord did not act reasonably to minimize their

damages or losses due to the Tenants' breach when they made no attempt to secure a new renter for this rental unit. Therefore, I dismiss the Landlord's claim for the recovery of their lost rental income for December 2020.

The Landlord has also claimed for \$20.00 in compensation for their costs to have a new mailbox key made for the rental unit. I accept the agreed-upon testimony of these parties that the Tenants did lose the mailbox key for the rental unit during this tenancy. Section 37(2) of the Act requires that a tenant return all keys to a rental unit at the end of the tenancy.

***Leaving the rental unit at the end of a tenancy***

***37 (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, and*
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

I find that the Tenants breached section 37 of the Act when they failed to return the mailbox key for this tenancy. However, after reviewing the Landlord's documentary evidence, I noted that the Landlord's invoice for the replacement key shows that it cost the Landlord \$13.09 to have a new mailbox key made, not the \$20.00 that the Landlord has claimed for, and testified to in these proceedings. I find that the Landlord's request to recover more than their actual costs to be an unjust enrichment, and I must decline to award the Landlord their requested amount of \$20.00 for the replacement of a mailbox key. However, I will grant the Landlord the recovery of their actual cost of 13.09, for the replacement of the mailbox key for this rental unit. I grant permission to the Landlord to retain 13.09 from the security deposit they are holding for this tenancy in full satisfaction of this awarded.

Additionally, the Landlord has requested \$200.00 to repair the fireplace in the rental unit; however, during these proceedings, the Landlord was unable to offer testimony as to what was wrong with this fireplace or how these Tenants had damaged the fireplace during this tenancy. Section 37 of the Act, as stated above, requires that a tenant return the rental unit to the landlord undamaged at the end of the tenancy but that a tenant is not responsible for normal wear and tear to a rental unit.

As the Landlord could not offer an explanation as to why the fireplace was not working at the end of tenancy, I am unable to determine if the cause of the non-working fireplace

is due to damage caused by this Tenants, which they would bare the financial responsibility for, or if the cause was due to normal wear and tear, which the Landlord would bare the financial responsibility.

In the absence of a reasonable explanation of the cause of the malfunctioning fireplace, I am unable to determine if there has been a breach of the *Act* by the Tenants on this point, and in the absence of a proven breach of the *Act*, I find that this Tenants can not be found liable of the cost of this repair, and I must dismiss the Landlord's claim on this point in its entirety.

The final item the Landlord has claimed for is \$450.00 to replace and install a damaged kitchen cabinet, consisting of \$250.00 for a new cabinet and \$200.00 in labour costs. I accept the agreed-upon testimony of these parties that the Tenants did cause the damage to the kitchen cabinet during their tenancy. Section 32(3) of the *Act* set out the obligation for a tenant to repair damage to the rental unit.

***Landlord and tenant obligations to repair and maintain***

***32 (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.***

I find that the Tenants breached section 32(3) of the *Act* when they returned the rental unit to the Landlord with a damaged cabinet. I accept the Landlord's testimony that it will cost them \$450.00 to have the cabinet replaced; however, in determining the suitable award, I must refer to the Residential Tenancy Branch guideline # 40 Useful Life of Building Elements. The guideline sets the useful life of kitchen cabinets at 25 years.

I accept the testimony of the Landlord that the kitchen cabinets were at least 25 years old at the beginning of this tenancy. Therefore, I find that the kitchen cabinets were at the end of their life expectancy before this tenancy had begun. Accordingly, I find that the Landlord is not entitled to the recovery of their costs to replace this cabinet, and I dismiss the Landlord's claim on this point.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been entirely successful in their application, I decline to return the Landlord's filing fee for this application.

Overall, I grant permission to the Landlord to retain \$13.09 of the security deposit they are holding for this tenancy, in full satisfaction of the amounts awarded above.

I order the Landlord to return the remaining \$1,761.91 security and pet damage deposits that they are holding for this tenancy to the Tenants within 15 days of the date of this decision.

In order to ensure compliance with the above order, I grant the Tenants a conditional monetary order in the amount of \$1,761.91 pursuant to section 38 of the *Act*. This order is dated 16 days from the date of this decision and is only to be served to the Landlord in the event the Landlord does not comply as ordered.

### Conclusion

I grant permission to the Landlord to retain \$13.09 from the security deposit they are holding for this tenancy.

I order the Landlord to return the remaining \$1,761.91 of the security and pet damage deposits they are holding for tenancy to the Tenants within 15 days of the date of this decision.

I grant the Tenants a conditional **Monetary Order** in the amount of **\$1,761.91**. The Tenants are provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord 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: April 26, 2021

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Residential Tenancy Branch