



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Onni Property Management  
Services and [tenant name ppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the Residential Tenancy Regulation (the Regulation) or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenant's security deposit (the deposit), pursuant to section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The landlord was represented by property manager NT and director JS (the landlord). Witness for the landlord EC and witness for the tenant ME also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing both parties affirmed they understand it is prohibited to record this hearing.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

### Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. a monetary order for loss?
3. an authorization to retain the tenant's deposit?
4. an authorization to recover the filing fee for this application?

## Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed they entered into a fixed term tenancy from June 15, 2020 to June 30, 2021. Monthly rent of \$2,875.00 was due on the first day of the month. At the outset of the tenancy a deposit of \$1,437.50 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence. Clause 2 of the tenancy agreement addendum states:

### 2. Arrears, Late Payments & N.S.F. Cheques:

Arrears and late payments of any sums due to the Landlord from the Tenant are subject to a service charge of \$25 for any payment made after the 1<sup>st</sup> day of the month. N.S.F. cheques are subject to an additional service charge of \$25. Charge(s) must be paid by debit, certified cheque or money order. The Tenant also agrees that if rent is paid late three (3) or more times in a twelve (12) month period, the Landlord may, at its' sole discretion, terminate the Tenancy Agreement immediately.

The tenant served the landlord a written notice to end tenancy on October 14, 2020. On November 04, 2020 the landlord sent a letter to the tenant:

It has been brought to the attention of [landlord] that you would now like to break their lease by giving notice and ending your tenancy agreement. We accepted your notice to vacate on Nov 30, 2020 and as such, paid for advertisement of the unit, allocated additional resources, and paid commission to have the unit re-rented.

The tenant vacated the rental unit on November 30, 2020, prior to the end of the fixed term. The landlord re-rented the unit on December 01, 2020 and has been receiving monthly rent in the amount of \$3,000.00. The forwarding address was provided in writing on December 07, 2020. The landlord submitted this application on December 17, 2020. The tenant did not authorize the landlord to retain the deposit.

Both parties submitted into evidence a copy of the move-out inspection report not signed by the tenant. The landlord affirmed the tenant scheduled via text messages the move-out inspection for November 30, 2020. The landlord's witness EC stated the

tenant and her partner ME were at the rental unit on November 30, 2020, they were invited to participate of the move-out inspection, but they refused to participate and did not sign the inspection report. EC testified ME was abusive when he asked the tenant to sign the report.

Both the tenant and witness ME said the landlord scheduled a meeting to receive the keys on November 30, 2020 but did not schedule a move-out inspection. The tenant affirmed on November 30, 2020 EC received the keys, did not conduct a move-out inspection and did not ask her to sign the inspection report. The tenant's witness ME testified on November 30, 2020 EC inspected the rental unit alone for less than one minute, EC did not show the tenant the inspection report and did not ask the tenant to sign it. ME said he was not abusive during the meeting.

The landlord affirmed the tenant paid \$1,437.50 for November's 2020 rent. The landlord is seeking compensation for October's rent balance of \$6.42, November's rent balance of \$1,437.50, utilities in the amount of \$94.86 and the late payment fee of \$25.00. The landlord submitted into evidence a ledger indicating the tenant is in arrears for unpaid rent, utilities and the late payment fee in the total amount of \$1,550.94. The tenant agreed she owes \$1,550.94.

The landlord is claiming for compensation in the amount of \$476.57 for walls damage. The landlord stated the 3 bedroom, 1,150 square feet rental unit was painted in early June 2020. The move-in inspection report, signed by both parties on June 15, 2020, indicates the rental unit was in good condition when the tenancy started. The move-out inspection report indicates there was damage on the kitchen and living room walls ('damage on wall') and that they were in poor condition.

The landlord affirmed the tenant painted the living room, kitchen and entrance walls with a different colour without the landlord's authorization. The landlord submitted 16 photographs showing walls with a different colour. The landlord paid a contractor 7 hours at the hourly rate of \$45.00 to paint the living room, kitchen and entrance walls. The landlord submitted receipts into evidence for the labour cost (\$330.75 including taxes) and the paint cost (\$145.82) .

The tenant testified she did not paint the walls and she did not indicate in the move-in inspection report that the walls had damage when the tenancy started because she did not expect the walls to be perfect. The tenant submitted into evidence 2 photographs showing damaged walls in the living room on June 01, 2020. The tenant said she hired a contractor to do small repairs in the rental unit and when the tenancy ended the rental

unit was in good condition. The tenant's witness ME said he painted the east walls of the living room, but the landlord is asking for compensation for the west walls.

The landlord is claiming for compensation in the amount of \$880.01 for the tenant's replacement cost because the tenant vacated the rental unit before the end of the fixed term tenancy. The landlord stated the owner of the rental unit paid a commission to the property management company in the amount of \$787.50 and advertising costs in the amount of \$92.51 (invoices submitted into evidence) to find a new tenant. The landlord explained if the tenancy had continued until the end of the fixed term the owner of the rental unit would have the same cost, but as the tenancy lasted half of the fixed term period the cost to the owner was doubled.

The tenant does not agree to pay the tenant's replacement cost and said that as the landlord was successful in re-renting the unit for a higher rent the increased amount of rent should be set off against any amount awarded to the landlord.

The landlord submitted into evidence a monetary order worksheet dated December 14, 2020. The total amount the landlord is claiming is \$2,907.53.

### Analysis

Section 7 of the Act states:

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) A landlord or tenant who claims compensation for 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.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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. 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.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

### End of tenancy

Section 44 of the Act states:

- (1)A tenancy ends only if one or more of the following applies:
- (a)the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
    - (i)section 45 [tenant's notice];
      - (i.1)section 45.1 [tenant's notice: family violence or long-term care];
    - (ii)section 46 [landlord's notice: non-payment of rent];
    - (iii)section 47 [landlord's notice: cause];
    - (iv)section 48 [landlord's notice: end of employment];
    - (v)section 49 [landlord's notice: landlord's use of property];
    - (vi)section 49.1 [landlord's notice: tenant ceases to qualify];
    - (vii)section 50 [tenant may end tenancy early];
  - (b)the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
  - (c)the landlord and tenant agree in writing to end the tenancy;
  - (d)the tenant vacates or abandons the rental unit;**
  - (e)the tenancy agreement is frustrated;
  - (f)the director orders that the tenancy is ended;
  - (g)the tenancy agreement is a sublease agreement.

(emphasis added)

Based on the uncontested testimony of both parties, I find the tenancy ended on November 30, 2020, pursuant to section 44(1)(d) of the Act.

### Move-out inspection

Section 35 of the Act states:

#### **Condition inspection: end of tenancy**

**(1)The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit**

**(a)on or after the day the tenant ceases to occupy the rental unit, or**

**(b)on another mutually agreed day.**

**(2)The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.**

(3)The landlord must complete a condition inspection report in accordance with the regulations.

(4)Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

**(5)The landlord may make the inspection and complete and sign the report without the tenant if**

**(a)the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or**

**(b)the tenant has abandoned the rental unit.**

(emphasis added)

In this case both parties agreed they were at the rental unit on the day the tenant ceased to occupy it and disagreed if the landlord scheduled the move-out inspection. As the tenants stated they scheduled a meeting with the landlord to return the keys on November 30, 2020, I find it is reasonable to assume that a move-out inspection would happen at that time.

The tenant stated there was no move-out inspection and the tenant's witness ME said there was an inspection for less than one minute. Based on the landlord's witness EC more cohesive and convincing testimony I find, on a balance of probabilities, that the landlord conducted the move-out inspection and the tenant refused to sign it. Thus, the landlord complied with section 35(5) of the Act and I accept the accuracy of the report.

#### Unpaid rent, utilities and late fee

Based on the uncontested testimony of both parties and the tenancy agreement, I find the parties had a fixed term tenancy agreement from June 15, 2020 to June 30, 2021 and rent of \$2,875.00 was due on the first day of the month.

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

Section 7(2) of the Regulation states the landlord can only charge late rent fees if the tenancy agreement provides for that fee.

Based on the uncontested testimony of both parties, the tenancy agreement and the ledger, I find the tenant is in rental arrears for the amount of \$1,550.94 for the balance

of October 2020 rent (\$6.42), the balance of November 2020 rent (\$1,437.50), utilities (\$94.86) and the late payment fee (\$25.00). I award the landlord the amount of \$1,550.94. I note the total amount in arrears is \$1,563.78. However, the landlord applied for compensation in the amount of \$1,550.94 and that is the amount I award.

#### Walls damage

Section 32(3) of the Act states: "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."

Section 37(2) of the Act states:

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

Residential Tenancy Branch Policy Guideline 1 states:

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used.

If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

**3. The tenant is responsible for all deliberate or negligent damage to the walls.**

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises.

**The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.**

**(emphasis added)**

Regulation 21 states:

Evidentiary weight of a condition inspection report

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit

or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I find the testimony of the tenant does not outweigh the evidentiary value of the inspection report. Furthermore, the tenant testified that she did not paint the walls and the tenant's witness ME said he painted some of the walls in the rental unit.

Based on the landlord's witness EC cohesive and convincing testimony, the report and the receipts, I find the tenant breached sections 32(3) and 37(2) of the Act by not repairing the damaged walls and the landlord suffered a loss of \$476.57 because of the tenant's failure to comply with the Act.

Thus, I award the landlord \$476.57 for this loss.

#### Tenant's Replacement cost

Based on the landlord's undisputed testimony, the property management invoices and the November 04, 2020 letter, I find the tenant breached the tenancy agreement by vacating the rental unit before the end of the fixed term and as a consequence of the tenant's breach of the tenancy agreement the landlord suffered a loss. I further find the landlord explained to the tenant on November 04, 2020 that he was suffering a loss because the tenant was vacating the rental unit before the end of the fixed term.

The tenancy started on June 15, 2020, ended on November 30, 2020 and was supposed to end on June 30, 2021. As the tenant occupied the rental unit for 44% of the fixed term period and the landlord would have the same tenant's replacement cost if the tenancy had lasted until the end of the fixed term, I find the landlord is entitled to 56% of the tenant's replacement cost claimed. As such, I award the landlord the amount of \$492.81(56% of 880.01).

#### Re-renting for a higher rent

Residential Tenancy Branch Policy Guideline 3 states:

In a fixed term tenancy, if a landlord is successful in re-renting the premises for a higher rent and as a result receives more rent over the remaining term than would otherwise have been received, the increased amount of rent is set off against any other amounts owing to the landlord for unpaid rent or damages, but any remainder is not recoverable by the tenant.

Based on the undisputed testimony, I find that as a consequence of the tenant's breach of the tenancy agreement the landlord acted reasonably to minimize his losses and received more rent from the new tenant between December 2020 and April 2021 in the



total amount of \$625.00 (\$125.00 x 5 months). I am not considering May and June 2021 rent payments, as I cannot predict if these rent payments will be received by the landlord.

Thus, per sections 7 and 67 of the Act, and considering Policy Guidelines 3 and 16, I set off \$625.00 from the amount the tenant is owing to the landlord.

#### Deposit

Section 38(1) of the Act requires the landlord to either return the tenant's deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

The forwarding address was provided in writing on December 07, 2020. The landlord brought an application for dispute resolution on December 17, 2020, within the timeframe of section 38(1) of the Act.

As explained in section D.2 of Policy Guideline #17, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the landlord to retain the \$1,437.50 deposit in partial satisfaction of the total monetary award.

#### Filing fee and summary

As the landlord was successful in this application, the landlord is entitled to recover the \$100.00 filing fee.

In summary:

<b>Item</b>	<b>Amount \$</b>
Unpaid rent, utilities and late fee	1,550.94
Walls damage	476.57
Tenant's replacement cost	492.81
Filing fee	100.00
Subtotal	2,620.32
Deposit (subtract)	1,437.50
Higher rent (subtract)	625.00
<b>Total</b>	<b>557.82</b>

Conclusion

Pursuant to sections 7, 26, 38, 67 and 72 of the Act, I authorize the landlord to retain the \$1,437.50 deposit and grant the landlord a monetary order in the amount of \$557.82

The landlord is provided with this order in the above terms and the tenant must be served with this order. 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.

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: May 06, 2021

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Residential Tenancy Branch