



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, loss of rent, for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on January 3, 2021, a Canada post tracking number was provided as evidence of service. The landlord stated the package was returned unclaimed.

The landlord testified that they had sent an earlier package to the tenant by registered mail, on December 27, 2020, which contained their evidence, however, they did not enclose the Notice of Hearing and the Application for Dispute Resolution, and it was signed by the tenant on January 2, 2021. Filed in evidence is a Canada post tracking number, which shows the tenant signed for the package.

The landlord stated that the tenant is likely avoiding service of the package mailed on January 3, 2021.

In this case, the tenant signed for a package on January 2, 2021. The tenant did not pick up the package mailed on January 3, 2021. I find the tenant was deemed served five days after it was mailed, January 8, 2021. Refusal or neglect to pick up the package does not override the deemed service provisions of the Act.

The landlord appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

#### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent, loss of rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

#### Background and Evidence

The parties entered into a fixed term tenancy which began on January 7, 2019 and was to expire on February 1, 2020. Rent in the amount of \$1,400.00 was payable on the seventh day of each month. The tenant paid a security deposit of \$700.00. The tenancy ended on October 20, 2020. Filed in evidence is a copy of the tenancy agreement.

The landlord claims as follows:

a.	Damage to door, and drywall	\$2,742.85
b.	Unpaid rent, loss of rent (\$1,066.75 + \$606.58)	\$1,673.33
c.	Cleaning costs	\$ 60.00
d.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$4,576.18</b>

#### Damage to door, and drywall

The landlord testified that on October 6, 2020 the police attended the rental unit to do a wellness check on the female co-tenant, not named in the application. The landlord stated that because of her nonresponse to the police, they broke the door in, causing

the door to crack and the door frame damaged. The landlord stated that the female co-tenant was found deceased due to drug overdose.

The landlord testified that the police would not cover the damage to the door. The landlord stated since their application was filed, they claimed the damage against their insurance, which they received money. However, they had to pay a deductible and their insurance premium went up by 50%.

#### Unpaid rent, loss of rent

The landlord testified that on October 7, 2019, they deposited the rent cheque for October 2019, which was returned due to insufficient funds. The landlord stated that they notified the tenant subject to this dispute and they were informed by the tenant that they had vacated the premise because the ministry of children's and family service had made them separate in April due to their child being hospitalized. The landlord stated that the tenant was never removed from the tenancy agreement, nor did the tenant ever tell them they were vacating. The landlord stated that they should be entitled to recover the unpaid rent for October 2019, and prorated rent for November 2019, as they were unable to find a new renter until November 30, 2019.

The landlord stated that the actual amount of unpaid rent and loss of rent is higher than what they had written in their application for dispute resolution.

Filed in evidence is a reproduced email that shows the tenant did not end their tenancy and thought their co-tenant would do so.

#### Cleaning costs

The landlord testified that the tenant did not come back to the rental unit to finish cleaning. The landlord stated the deceased co-tenant's mother came back and removed their belongings. However, a very large couch was left behind, and due to the circumstance of the female co-tenant's death they had to do additional cleaning. The landlord seeks to recover the cost of \$60.00. Filed in evidence are photographs.

#### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

#### Damage to door, and drywall

The landlord has received compensation for the damage caused to the door through their insurance company since they filed this application. Therefore, I find the landlord is not entitled to the amount claimed as this would mean that they have receive compensation for the same thing twice, which would be an unfair enrichment and not the actual loss. If the landlord has truly suffered a loss, such as any deductible they may have paid they are at liberty to reapply.

#### Unpaid rent, loss of rent

In this case, I am satisfied that the tenant subject to this dispute did not end their tenancy when they vacated the premise due to a Ministry of Children, and Family Service requirement. The tenant did not notify the landlord and remained on the tenancy agreement. It was the tenant's responsibility to end their tenancy in accordance with the Act.

In this case, the rent cheque the landlord received for October 2019, rent was returned due to insufficient funds and the rental unit was not vacated until the deceased co-tenant's belongings were removed until October 20, 2019. I find the tenant is responsible for the unpaid rent for October 2019.

Further, as the landlord had to repair damage to the door and clean the premise, they were unable to find a new renter until November 30, 2019, suffering additional loss.

While I accept the landlord did not calculate the amount correctly in their application for dispute resolution, that is something I cannot correct as no amendment was completed.

I find the landlord is bound by the amount claimed in their application for dispute resolution. Therefore, I find the landlord is entitled to recover unpaid and loss of rent in the total amount of **\$1,673.33**.

### Cleaning

In this case, I accept the undisputed testimony of the landlord that the tenant left a large couch behind and some additional cleaning was required. I find the amount the landlord claimed for removing the couch an additional cleaning reasonable. Therefore, I find the landlord is entitled to recover the cost of **\$60.00**.

I find that the landlord has established a total monetary claim of **\$1,833.33** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$700.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,133.33**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

The landlord is at liberty to reapply for the actual loss for the damage to the door. It would be expected that should the landlord reapply that the landlord would show proof of the deductible paid.

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 05, 2021

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Residential Tenancy Branch