



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNRL-S, FFL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on January 29, 2021 (the “Application”). The Landlord applied as follows:

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

The Landlord appeared at the hearing with Legal Counsel. The Tenant did not appear at the hearing. I explained the hearing process to the Landlord and Legal Counsel who did not have questions when asked. I told the Landlord and Legal Counsel that they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord provided affirmed testimony.

The amounts sought in the Application differed from the amounts sought in the Monetary Order Worksheet. The Landlord did not file an Amendment to the Application to change the amounts sought as required by rule 4.1 of the Rules. A party cannot change their Application for Dispute Resolution through submitting a Monetary Order Worksheet with a different amount on it. The Tenant did not appear at the hearing to confirm their understanding that the Landlord would seek the amount on the Monetary Order Worksheet and not the Application. In the circumstances, I will only consider whether the Landlord is entitled to the amount sought on the Application.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

The Landlord and Legal Counsel stated the following. The hearing package was sent to the Tenant by registered mail February 05, 2021 to an address provided by the Tenant to the Landlord in early 2021. Tracking Number 1 relates to this.

I looked Tracking Number 1 up on the Canada Post website which shows that notice cards were left in relation to the package February 08, 2021 and February 19, 2021. The website shows the package was unclaimed and returned.

The Landlord and Legal Counsel stated the following. The Landlord's evidence was sent to the Tenant at the same address by registered mail May 12, 2021. Tracking Number 2 relates to this.

I looked Tracking Number 2 up on the Canada Post website which shows that notice cards were left in relation to the package May 13, 2021 and May 19, 2021. The website shows the package was unclaimed and returned.

The Landlord submitted documentary evidence regarding the package sent May 12, 2021.

Based on the undisputed submissions of the Landlord and Legal Counsel, I am satisfied the Tenant was served with the hearing package in accordance with section 89(1)(d) of the *Residential Tenancy Act* (the "Act"). The Tenant cannot avoid service by failing to pick up registered mail packages. Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the package February 10, 2021. I find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

Based on the undisputed submissions of the Landlord and Legal Counsel, as well as the documentary evidence submitted, I am satisfied the Tenant was served with the Landlord's evidence in accordance with section 88(d) of the *Act*. Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the package May 17, 2021. I find the Landlord complied with rule 3.14 of the Rules in relation to the timing of service.

As I was satisfied of service of the Tenant, I proceeded with the hearing in the absence of the Tenant. The Landlord and Legal Counsel were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony and submissions 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. Is the Landlord entitled to compensation for damage caused to the rental unit?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord sought the following compensation in the Application:

Item	Description	Amount
1	Compensation for damage	\$3,000.00
2	To recover unpaid rent	\$13,800.00
3	To recover the filing fee	\$100.00
	<b>TOTAL</b>	<b>\$16,900.00</b>

The Monetary Order Worksheet includes the following claims:

Item	Description	Amount
1	Tempered glass	\$824.40
2	Move-out cleaning	\$450.45
3	Painting	\$1,512.00
4	Washer/dryer	\$1,580.27
5	Rent	\$13,800.00
	<b>TOTAL</b>	<b>\$18,167.12</b>

A written tenancy agreement was submitted as evidence. The tenancy started July 15, 2019. Rent was \$2,300.00 per month due on the first day of each month. The Tenant paid a \$1,150.00 security deposit.

The Landlord and Legal Counsel stated as follows.

The Tenant moved out of the rental unit September 28, 2020.

The Tenant provided a forwarding address in writing to the Landlord January 13, 2021.

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy.

The Landlord and Tenant had a conversation in which the Tenant said the Landlord could put the security deposit towards rent owing. The Landlord has an email in which the Tenant agreed the Landlord could decide whether to keep the security deposit. This email has not been submitted.

There was no paperwork done in relation to a move-in inspection. The Tenant was not given two opportunities, one on the RTB form, to do a move-in inspection.

A move-out inspection was not done. The Tenant was not given two opportunities, one on the RTB form, to do a move-out inspection.

In relation to the tempered glass, the Tenant smashed the floor to ceiling glass divider in the rental unit. The Tenant admitted to falling through the glass. The glass was broken at the end of the tenancy and had to be replaced. The invoice for the \$824.40 is in evidence.

In relation to the move-out clean, the Tenant had not done any cleaning in the rental unit. The photos in evidence show the state of the rental unit at the end of the tenancy. The Landlord had to hire cleaners to clean the rental unit and the invoice for this is in evidence.

In relation to painting, the Tenant painted the whole rental unit a different color during the tenancy without getting permission to do so. There was also a very large number of holes in the walls at the end of the tenancy. The Landlord had the rental unit re-painted back to the original color. The invoice for the painting is in evidence.

In relation to the washer and dryer, the washer started to smoke when used after the Tenant moved out. The Landlord had someone look at the washer and was told it had been overloaded. The washer should have lasted 20 to 30 years. The washer was only eight years old. The washer had to be replaced. The washer was worth \$2,500.00. The Landlord purchased a less expensive washer/dryer combination. The dryer was not damaged at the end of the tenancy.

In relation to rent, the Tenant stopped paying rent in April of 2020. There is six months of rent outstanding. The documents in evidence outline the outstanding rent of \$13,800.00. The Landlord is not aware of the Tenant having any authority under the *Act* to withhold rent.

The Landlord submitted documentary evidence to support the claim.

### Analysis

#### ***Security Deposit***

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 undisputed testimony and submissions provided about move-in and move-out inspections, I do not find that the Tenant 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 Landlord extinguished their right in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage and the Landlord has claimed for outstanding rent.

Based on the undisputed testimony and submissions provided, I accept that the tenancy ended September 28, 2020.

Based on the undisputed testimony and submissions provided, I accept that the Tenant provided a forwarding address in writing to the Landlord January 13, 2021.

Section 38(1) of the *Act* requires a landlord to return the security deposit in full or file a claim against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. Here, the Landlord had 15 days from January 13, 2021 to file the Application. The Application was filed January 29, 2021, outside of the 15-day deadline. I find the Landlord did not comply with section 38(1) of the *Act*.

There are exceptions to section 38(1) of the *Act* set out in sections 38(2) to (4) of the *Act*. Based on the undisputed testimony and submissions provided, as well as my findings above, I do not find that any of the exceptions apply.

I note that section 38(4) of the *Act* states:

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

I am not satisfied based on the evidence provided that the Tenant agreed in writing to the Landlord keeping the security deposit at the end of the tenancy because there is no documentary evidence of this before me. I would expect such documentary evidence to have been submitted, particularly on an Application for Dispute Resolution where the Landlord is seeking to keep the security deposit.

Given the Landlord did not comply with section 38(1) of the *Act*, the Landlord cannot claim against the security deposit and must pay the Tenant double the amount of the security deposit pursuant to section 38(6) of the *Act*. Therefore, the Landlord owes the Tenant \$2,300.00. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

The Landlord is still entitled to claim for compensation, and I consider that now.

### ***Compensation***

Section 7 of the *Act* states:

(1) If a...tenant does not comply with this Act...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...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.

I accept the undisputed testimony and submissions provided and based on these, as well as the documentary evidence submitted, I accept the following and make the following findings.

***Tempered glass, move-out cleaning, painting, washer/dryer***

Section 37 of the *Act* addresses a tenant's obligations upon vacating a rental unit and 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...

I accept that the Tenant smashed the tempered glass divider and that it was broken at the end of the tenancy. I find the Tenant breached section 37 of the *Act*. I accept that the Landlord had to replace the tempered glass divider and that this cost \$824.40. I find this amount reasonable and the Tenant did not appear to dispute this amount. I award the Landlord the \$824.40 sought.

I accept that the Tenant did not clean the rental unit at the end of the tenancy. I find the Tenant breached section 37 of the *Act*. I accept that the Landlord had to hire cleaners to clean the rental unit and that this cost \$450.45. I find this amount reasonable and the Tenant did not appear to dispute this amount. I award the Landlord the \$450.45 sought.

I accept that the Tenant painted the rental unit a different color during the tenancy without getting permission to do so. I accept that the Tenant breached section 37 of the *Act*. I accept that the Landlord was entitled to have the rental unit re-painted back to the original color and that this cost \$1,512.00. I find this amount reasonable and the Tenant did not appear to dispute this amount. I award the Landlord the \$1,512.00 sought.

I accept that the Tenant misused the washer and that it was smoking at the end of the tenancy. I find the Tenant breached section 37 of the *Act*. I accept that the Landlord had to replace the washer. I do not accept that the Landlord had to replace both the washer and dryer. I am not satisfied the washer was worth \$2,500.00 as there is no documentary evidence before me to support this. Further, RTB Policy Guideline 40 states that the useful life of a washer is 15 years and therefore I find the washer was past approximately half of its useful life. In the circumstances, I reduce the amount awarded to the Landlord by half to account for the dryer that did not need to be replaced and half again to account for the eight years the Landlord had use of the washer. I award the Landlord \$395.00.

### ***Rent***

Section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept that the Tenant was required to pay \$2,300.00 in rent per month by the first day of each month pursuant to the tenancy agreement. I accept that the Tenant did not pay rent for six months. I do not find that the Tenant had authority under the *Act* to withhold rent as there is no evidence before me to support this. Therefore, the Landlord is entitled to recover \$13,800.00.

### ***Filing Fee***

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



### **Summary**

In summary, the Landlord is entitled to the following compensation:

<b>Item</b>	<b>Description</b>	<b>Amount</b>
1	Tempered glass	\$824.40
2	Move-out cleaning	\$450.45
3	Painting	\$1,512.00
4	Washer/dryer	\$395.00
	<b>TOTAL FOR DAMAGE</b>	<b>\$3,181.85</b>
5	Rent	\$13,800.00
6	Filing fee	\$100.00
	<b>TOTAL FOR ALL CLAIMS</b>	<b>\$17,081.85</b>

As stated, I will only consider the damage claim up to the \$3,000.00 sought in the Application and therefore the Landlord is entitled to the full \$3,000.00 sought for damage in the Application. Given this, the Landlord is entitled to the following:

<b>Item</b>	<b>Description</b>	<b>Amount</b>
1	Compensation for damage	\$3,000.00
2	To recover unpaid rent	\$13,800.00
3	To recover the filing fee	\$100.00
	<b>TOTAL</b>	<b>\$16,900.00</b>

The Tenant owes the Landlord \$16,900.00. However, the Landlord owes the Tenant \$2,300.00. The \$2,300.00 is deducted from the amount owed to the Landlord and therefore the Tenant owes the Landlord \$14,600.00. The Landlord is issued a Monetary Order in this amount pursuant to section 67 of the *Act*.

### **Conclusion**

The Landlord is entitled to \$14,600.00 and is issued a Monetary Order in this amount. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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: June 30, 2021

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Residential Tenancy Branch