



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. A Monetary Order for damages to the unit - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution, notice of hearing and evidence (the “Package”) by registered mail on February 25, 2021 in accordance with Section 89 of the Act. Postal evidence indicates that the mail was collected on March 1, 2021. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenant received the Package on March 1, 2021. The Landlord were given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter

The Landlord submitted hydro bills as evidence. The Landlord’s application does not include any particulars for a hydro claim, the monetary order worksheet does not set out a cost claimed for hydro and the Landlord did not make an amendment to add this claim.

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure provides that claims are limited to what is stated in the application. As the application contains no claim for hydro costs, I find that this claim may not be considered. The Landlord remains at liberty to make this claim in the future subject to any limitation dates.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

The tenancy under written agreement started on June 15, 2021 for a fixed term to end June 30, 2021. Rent of \$2,300.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,150.00 as a security deposit. The Parties mutually conducted a move-in inspection with a condition report completed. At the end of January 2021, the Landlord was informed by the mother of another occupant of the unit that the Tenant had moved out of the unit to live at their parental residence. The Landlord had not received any notice from the Tenant. The Landlord immediately sent numerous calls, texts and emails to the Tenant without reply. The Tenant had paid the rent for February 2021 however this payment was returned. On February 5, 2021 the Landlord attended the unit and confirmed it was empty with the keys left in the unit. The Landlord confirms that none of the communications with the Tenant contained any offers for a move-out inspection.

The unit was left with several bags of garbage, a furniture piece, no cleaning, and damages to the two closet door tracking mechanisms and a transition strip. The unit was new in 2019 and the Tenant was the first occupant. The Landlord provides photos of the damages and claims as follows:

- \$350.00 to remove the garbage and furniture;
- \$320.00 to clean the carpet and unit,

- \$150.00 to repair the tracking and transition strip.

Paragraph 13 of the addendum to the tenancy agreement provides that the Tenant will pay any Strata fines levied on the unit. The Tenant was provided a digital copy of the Strata Rules and Bylaws after the signing of the tenancy agreement. The Strata levied two fines against the unit totalling \$400.00. The Landlord provides a copy of Strata letters in relation to the complaints and a copy of an email to the Tenant notifying them of the fines. The Landlord has paid the fines to the Strata. The Landlord claims \$400.00.

The Landlord withdraws the re-rental costs claim.

The Landlord advertised the unit on-line on various sites starting February 6, 2020. The unit was advertised for the same rental rate. No offers were made to rent the unit. As a result, the owners moved into the unit on April 1, 2021. The Landlord claims rents for February and March 2021.

### Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Given the undisputed and supported evidence of damages to the unit, including the lack of cleaning, and given the invoice setting out the costs I find that the Landlord has substantiated an entitlement to the costs claimed of **\$350.00, \$420.00 and \$150.00.**

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is

reasonable to minimize the damage or loss. Given the undisputed and supported evidence of Strata fines and the terms of the tenancy agreement I find that the Landlord has substantiated the compensation claimed of **\$400.00**. Given the undisputed evidence of the Tenant moving out of the unit before the end of the fixed term I find that the Tenant breached the fixed term. Given the Landlord's evidence of advertising the unit I also find that the Landlord took reasonable efforts to mitigate those costs. The Landlord is therefore entitled to the lost rental income claimed for February and March 2021 in the total amount of **\$4,600.00**.

As the Landlord has withdrawn the re-rental claims I dismiss this claim. As the Landlord has been successful with their claims, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$5,920.00**. Deducting the security deposit plus zero interest of **\$1,150.00** from this entitlement leaves **\$4,770.00** remaining owed to the Landlord.

### Conclusion

I Order the Landlord to retain the security deposit of \$1,150.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining **\$4,770.00**. If necessary, this order may be filed in the Small Claims 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: July 7, 2021

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Residential Tenancy Branch