



# 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

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

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

I left the teleconference connection open until 2:18 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. Landlords JO and JE attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

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

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The landlords affirmed the tenant provided her forwarding address in writing via text message on March 13, 2021.

I accept the landlords' testimony that the tenant was served with the notice of hearing and evidence (the materials) by registered mail on March 31, 2021 sent to the tenant's

forwarding address, in accordance with section 89(1)(d) of the Act (the tracking number and the tenant's forwarding address are recorded on the cover of this decision).

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 the tenant is deemed to have received the materials on April 05, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

### Issues to be Decided

Are the landlords 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?

### 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 landlords' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlords' obligation to present the evidence to substantiate the application.

The landlords affirmed the periodic tenancy started on July 01, 2019 and ended on March 01, 2021. Monthly rent was \$2,700.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$1,350.00 and a pet damage deposit of \$1,350.00 were collected and the landlords hold the deposits in the amount of \$2,700.00 in trust. The tenancy agreement was submitted into evidence.

The landlords affirmed the tenant verbally agreed to conduct the move out inspection on March 03, 2021 and did not attend. The landlords' representative conducted the move out inspection alone.

A copy of the condition inspection report (the report) was submitted into evidence. The report is signed by the landlord and the tenant on the move in inspection date, and only by the landlord on the move out inspection date. The report indicates the rental unit was in good condition and clean when the tenancy started and dirty when the tenancy ended. The report lists several issues when the tenancy ended: major door damage in

the master bedroom, damaged windows coverings in the living room, damaged door trim in the main bathroom, wall light missing and dirty walls. It states the tenant is responsible for repairs:

END OF TENANCY

Z. Damage to rental unit or residential property for which the tenant is responsible:

Broken master bedroom door, damage trim, dent on dishwasher, hole in wall above built in vacuum outlet, holes in wall from large screws to hang items.

The landlords are claiming for rent in the amount of \$3,400.00, as the tenants paid rent in the amount of \$2,000.00 in January 2021 and did not pay rent in February 2021.

The landlords are claiming for “repairs/damage/cleaning” in the amount of \$1,300.00. The landlords affirmed the rental unit was not clean when the tenancy ended, the tenants damaged the master bedroom door, broke the blinds, caused holes in the walls; broke the door trim, spilled liquids on the walls, damaged the light fixtures and left more than 100 cigarette butts in the rental unit. The landlord affirmed the rental unit was painted before the tenancy started and the floor and light fixtures were new.

The landlords submitted three receipts in the total amount of \$368.92: \$76.01 for blinds (March 12, 2021); \$225.56 for a door (March 21, 2021) and \$67.35 for “HOC IND PIN” (March 11, 2021) and 21 photographs taken on March 07, 2021. The landlords affirmed they paid two contractors to clean the 3-bedroom, 1,450 square-foot rental unit for four hours \$200.00 and that they worked several hours to further clean and repair the rental unit.

The landlords are claiming for loss of rental income from March 01 to 15, 2021 in the amount of \$1,350.00. The landlords affirmed that they could not list the rental unit or advertise it before March 15, 2021 because they were conducting the necessary repairs and cleaning it. The rental unit was re-rented on April 01, 2021.

The landlords submitted a monetary order worksheet indicating a total monetary claim in the amount of \$6,150.00.

### Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(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.

### Unpaid rent

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

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 the landlords' uncontested testimony that the tenancy agreement required the tenant to pay monthly rent of \$2,700.00 on the first day of the month.

I accept the landlords' uncontested testimony that the tenants paid rent in the amount of \$2,000.00 in January 2021 and did not pay rent in February 2021.

Based on the landlords' undisputed testimony, I find the tenant is in arrears for the balance of January 2021 rent (\$700.00) and February 2021 rent (\$2,700.00).

As such, I award the landlords \$3,400.00.

#### Cleaning

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:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

Based on the landlords' undisputed testimony, the report and the photographs, I find the tenant breached section 37(2)(a) of the Act by failing to clean the rental unit when the tenancy ended, and the landlords incurred a loss in the amount of \$200.00.

I award the landlords compensation in the amount of \$200.00 for cleaning expenses.

#### Repairs

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".

Based on the landlords' undisputed testimony, the report and the photographs, I find the tenant breached section 32(3) of the Act by failing to repair the master bedroom door, the windows coverings (blinds) and the light fixtures and the landlords suffered a loss.

The landlords' testimony about the labour necessary to conduct the repairs was vague. The landlords did not submit labour receipts and did not indicate how many hours of labour were necessary to conduct the repairs. I find the landlords failed to prove, on a

balance of probabilities, that they suffered a total loss of \$1,300.00 for repairs and cleaning.

Considering the receipts for materials submitted into evidence, I find it reasonable to award the landlords compensation in the amount of \$368.92.

I award the landlords compensation in the amount of \$368.92 for repairs materials.

#### Loss of rental income

Based on the landlords' testimony, the report and the receipts, I find that the landlords incurred a loss of rental income because the tenants damaged and did not clean the rental unit and the landlords could not list or advertise it before the repairs were completed.

Residential Tenancy Branch Policy Guideline 3 sets conditions for loss of rental income claims. It states:

Where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement (section 7(1) of the RTA and the MHPTA). This can include the unpaid rent to the date the tenancy agreement ended and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement.

Further to that, Policy Guideline 5 provides:

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, **the landlord has a duty to minimize loss of rental income. This means a landlord must try to:**

- 1. re-rent the rental unit at a rent that is reasonable for the unit or site; and**
- 2. re-rent the unit as soon as possible.**

For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.

If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied.

(emphasis added)

The three receipts submitted are dated between March 11 and 21, 2021. I find the landlords' testimony about the length of time necessary to conduct the repairs and clean the rental unit was vague. Based on the receipts and the landlords' testimony, I find the landlords did not take the mandatory steps to mitigate their damages, as they failed to explain why the repairs and the cleaning could not be completed sooner. The landlords did not explain why they did not purchase the repairs materials before March 11, 2021.

Thus, I dismiss the landlords' claim for compensation for loss of rental income.

#### 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 deposits 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

Based on the landlords' convincing testimony, I find the tenant sufficiently served her forwarding address on March 13, 2021, per section 71(2)(b) of the Act.

The landlords confirmed receipt of the tenant's forwarding address on March 13, 2021 and brought an application for dispute resolution on March 26, 2021, within the timeframe of section 38(1) of the Act.

Residential Tenancy Branch Policy Guideline 17 states:

The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

The landlords are authorized to retain the \$2,700.00 deposits in partial satisfaction of the monetary award.

#### Filing fee and summary

As the landlords were successful in this application, the landlords are entitled to recover the \$100.00 filing fee.

In summary:

Item	Amount \$
Unpaid rent	3,400.00
Cleaning	200.00
Repairs	368.92
Filing fee	100.00
Subtotal	4,068.92
Minus deposits	2,700.00 (subtract)
<b>Total:</b>	<b>1,368.92</b>

### Conclusion

Pursuant to sections 26, 38, 67 and 72 of the Act, I authorize the landlords to retain the \$2,700.00 deposits and grant the landlords a monetary order in the amount of \$1,368.92.

The landlords are 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: August 31, 2021

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Residential Tenancy Branch