



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDL, 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 tenants' security deposit (the deposit), pursuant to section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 2:29 P.M. to enable the tenants to call into this teleconference hearing scheduled for 1:30 P.M. The tenants did not attend the hearing. Landlords KT (the landlord) and SK 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."

I accept the landlord's testimony that the tenants were served with the application and evidence (the materials) by registered mail on March 19, 2021, in accordance with section 89(1)(d) of the Act (the tracking numbers 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 tenants are deemed to have received the materials on March 24, 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 respondents.

#### Preliminary Issue – application for a monetary order for unpaid rent

The landlords' application for a monetary order states:

01 - I want to recover the money for the unpaid rent - holding security or pet deposit  
\$700.00  
Applicant's dispute description  
Rent for February 15, 2021 to March 15, 2021 due - \$1,200.00 Damage deposit  
received on February 24, 2017 - \$ 500.00  
Balance Due.....\$700.00

Based on the landlords' application, I find the landlords stated in the application they are claiming for unpaid rent in the amount of \$1,200.00.

#### 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 tenants' 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 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 landlord affirmed the periodic tenancy started on March 15, 2017 and ended on February 28, 2021. Monthly rent was \$1,200.00, due on the fifteenth day of the month. The landlords did not conduct an inspection when the tenancy started. At the outset of the tenancy a security deposit of \$500.00 was collected and the landlords hold it in trust. The tenancy agreement was submitted into evidence.

The landlord confirmed receipt of the tenants' notice to end tenancy (the tenants' notice) on February 05, 2021 indicating the tenants will vacate the rental unit on February 28, 2021. The tenants vacated the rental unit on February 28, 2021 and sent a letter to the landlords containing their forwarding address:

Please be aware we have vacated the premises.

We have thoroughly inspected the unit and taken photos and have observed the following:

- There is a small amount of stain damage inside one bathroom cupboard from a spill I made.

- There are some plastic hooks I used for pictures on the bedroom wall that I was unable to get off easily. A bit of dry wall sustained damage attempting to remove them so I stopped.

- The oven is dirty

- A few items were left behind including a few bags of throw away items on the balcony and an arm chair in the living room. You may consider them abandoned.

Those items [above referenced] we take responsibility for. Any other items listed above are due to repair being needed to the unit, or regular wear and tear from being rented four years and we do not take responsibility for.

Once you have access cost of the above mentioned items you may deduct cost for only those from our \$500 damage deposit and we request you mail the remaining amount of damaged deposit made out to [redacted for privacy]

The parties did not conduct a move-out inspection.

The landlords are claiming for rent in the amount of \$1,200.00, as the tenants did not pay rent due on February 15, 2021.

The landlords are claiming for \$1,490.00 for painting expenses. The landlord affirmed the 920 square feet, two-bedroom rental unit was painted before the tenancy started and it was in perfect condition at the outset of the tenancy. When the tenancy ended there were over 25 plastic hooks glue damaging the walls. The landlord submitted into evidence 12 photographs showing dirty walls and an invoice indicating "full unit painting: \$1,490.00".

The landlords are claiming for \$400.00 for laminate floor repair expenses, as the tenants damaged 132 square feet of the laminate floor installed in 2016. The landlords submitted into evidence two photographs showing scratches on the laminate floor and an invoice indicating "laminate floor repair (132 square feet): \$400".

The landlords are claiming for \$200.00 for bathroom tile and shower door repair expenses, as the tenants damaged the bathroom tile and removed the shower door. The landlord affirmed the tenants replaced the bathroom tiles during the tenancy. The landlords submitted into evidence three photographs showing damaged bathroom tiles and the shower without a door and an invoice indicating "bathroom tile & shower door installation: \$200".

The landlords are claiming for \$200.00 for cleaning the oven and cupboard repair expenses. The tenants did not clean the oven and damaged the kitchen cupboards. The landlord submitted four photographs showing a dirty oven and dirty cupboards and an invoice indicating "appliances, cupboards, windows and sinks cleaning and re-coking: \$200.00".

The landlords are claiming for \$250.00 for gutter repair expenses, as the tenants damaged the rental unit's gutter. The landlords submitted into evidence 3 photographs showing a damaged gutter and an invoice indicating "Gutter repairs: \$250".

The landlords are claiming for \$270.00 for backyard repair expenses. The landlord affirmed the landlord and tenants shared the backyard and the tenants exercised on the grass in the backyard. The tenant damaged the backyard's grass while exercising and the landlord had to replant part of the grass. The landlord submitted into evidence an invoice indicating "lawn restoration: \$270.00".

The landlords are claiming for \$290.00 for the removal of the tenants' belongings from the rental unit. The landlord affirmed the tenants abandoned a table, a couch and chairs. The landlord paid \$290.00 to remove these items from the rental unit and submitted an invoice.

The landlord submitted a monetary order worksheet dated March 15, 2021 indicating a claim in the amount of \$3,100.00. The claim for unpaid rent is not included in the monetary order worksheet.

### 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 landlord's uncontested testimony that the tenancy agreement required the tenants to pay monthly rent of \$1,200.00 on the fifteenth day of the month.

I accept the landlord's uncontested testimony that the tenants served the tenants' notice on February 05, 2021.

Section 45(1) of the Act provides:

- (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
  - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As the tenants' notice was provided on February 05, 2021, the tenants must pay rent due on February 15, 2021, per section 45(1) of the Act.

Based on the landlord's undisputed testimony, I find the tenants are in arrears for the rent due on February 15, 2021 in the amount of \$1,200.00.

As such, I award the landlords \$1,200.00.

#### Painting expenses

Section 37(2) of the Act states:

Leaving the rental unit at the end of a tenancy

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[...]

- (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.**

Based on the undisputed landlord's testimony, the tenants' February 28, 2021 letter and the photographs submitted, I find, on a balance of probabilities, the tenants breached section 37(2)(a) of the Act by failing to paint the damaged walls and the landlords incurred a loss.

I find that 25 plastic hooks glue in a 920 square feet rental unit is an excessive number.

Residential Tenancy Branch Policy Guideline 40 states the useful life of interior painting is 4 years. The paint was 4 years old when the tenancy ended. I find the useful life of the interior painting was over when the tenancy ended. However, the landlords were still deriving a benefit from the painting and the tenants damaged the painting.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that while the useful life of the interior painting was expired, the damages caused by the tenants constitute an infraction of a legal right owed to the landlord under section 37(2)(a) of the Act. I therefore find that the landlords are entitled to nominal damages in the amount of \$300.00.

As such, I award the landlords \$300.00 in compensation for painting expenses.

#### Laminate floor repair

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 undisputed landlord's testimony, the photographs and the invoice, I find the tenants breached section 32(3) of the Act by not replacing the laminate floor damaged during the tenancy and the landlords incurred a loss of \$400.00.

Based on the landlord's testimony, I find the damaged floor was 5 years old when the tenancy ended. I find that laminate floor is similar to carpet floor.

Residential Tenancy Branch Policy Guideline 40 sets the useful life of carpets at 10 years and states that the arbitrator may consider the age of the item at the time of replacement when calculating the tenant's responsibility for the cost of replacement:

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

As such, considering the carpet was replaced after 50% of its useful life, I award the landlords compensation in the amount of \$200.00 (50% of \$400.00) for laminate floor repair expenses.

#### Bathroom tile and shower door

Based on the undisputed landlord's testimony, the photographs and the invoice, I find the tenants breached section 32(3) of the Act by not replacing the damaged bathroom tile and reinstalling the shower door and the landlords incurred a loss of \$200.00.

As such, I award the landlords \$200.00 in compensation for bathroom tile and shower door replacement expenses.

#### Oven cleaning and cupboard repair

Based on the undisputed landlord's testimony, the tenants' February 28, 2021 letter and the photographs submitted, I find, on a balance of probabilities, the tenants breached section 37(2)(a) of the Act by failing to clean the oven and section 32(3) of the Act by failing to repair the cupboards damaged during the tenancy and the landlords incurred a loss.

The invoice indicates the amount of \$200.00 is for repairs of appliances, cupboards, windows and sinks cleaning and re-coking. I find the landlords failed to prove, on a balance of probabilities, that they suffered a loss of \$200.00 for oven cleaning and cupboard repair.

Based on the photographs submitted, I find it reasonable to award \$150.00 for oven cleaning and cupboard repair expenses.

As such, I award the landlords \$150.00.



Gutter repair

Based on the undisputed landlord's testimony, the photographs and the invoice, I find, on a balance of probabilities, the tenants breached section 32(3) of the Act by failing to repair the gutter and the landlords incurred a loss of \$250.00 because of the tenants' non-compliance with the Act.

As such, I award the landlords \$250.00 for gutter repair expenses.

Backyard repair

Based on the undisputed landlord's testimony and the invoice, I find, on a balance of probabilities, the tenants breached section 32(3) of the Act by failing to replant part of the damaged grass and the landlords incurred a loss of \$270.00 because of the tenants' non-compliance with the Act.

As such, I award the landlords \$270.00 for backyard repair expenses.

Removal of the tenants' belongings

The tenant is responsible for removing his personal belongings from the rental unit when the tenancy ends, per section 37(2)(a) of the Act.

Based on the undisputed landlord's testimony, the February 28, 2021 letter and the invoice, I find, on a balance of probabilities, the tenants breached section 37(2)(a) of the Act by failing to remove their belongings and the landlords incurred a loss of \$290.00 because of the tenants' non-compliance with the Act.

As such, I award the landlords \$290.00 for removal of the tenants' belongings expenses.

Condition Inspection Report

Section 23(1) of the Act requires the landlord and tenant to complete a condition inspection report on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

I accept the landlord's testimony that the parties did not conduct an inspection when the tenancy started.

Section 24(2)(c) of the Act provides:

The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord  
(a) does not comply with section 23 (3) [2 opportunities for inspection],  
(b) having complied with section 23 (3), does not participate on either occasion, or  
**(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.**

**(emphasis added)**

Residential Tenancy Branch Policy Guideline 17 states the landlord extinguishes the right to retain or file a claim against a deposit if:

**7. The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:**

[...]

**• having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.**

[...]

9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
- to file a claim against the deposit for any monies owing for other than damage to the rental unit;
- to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and
- to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

[emphasis added]

As the landlords did not comply with section 23(1) of the Act, I find the landlords extinguished their right to claim against the deposit, per section 24(2)(c) of the Act.

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 landlord confirmed receipt of the tenants' forwarding address in writing on February 28, 2021.

Section 44(1)(d) of the Act states the tenancy ends when the tenant vacates the rental unit. Based on the landlord's testimony, the tenants' notice and the February 28, 2021 letter, I find the tenants vacated the rental unit on February 28, 2021 and the tenancy ended on that date, per section 44(1)(d) of the Act.

I note the February 28, 2021 tenants' letter did not authorize the landlords to retain a specific amount of the deposit.

In accordance with section 38(6)(b) of the Act, as the landlords extinguished their right to claim against the deposit and did not return the deposit within the timeframe of section 38(1) of the Act, the landlords must pay the tenants double the amount of the deposit.

Residential Tenancy Branch Policy Guideline 17 is clear that the arbitrator will double the value of the deposit when the landlord has not complied with the 15 day deadline; it states:

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:
  - if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenants are entitled to a monetary award of \$1,000.00 (double the deposit of \$500.00).

Filing fee and summary

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

The tenants are awarded \$1,000.00.

The landlords are awarded:

Item	Amount \$
Unpaid rent	1,200.00
Painting expenses	300.00
Laminate floor repair	200.00
Bathroom tile and shower door	200.00
Oven cleaning and cupboard repair	150.00
Gutter repair	250.00
Backyard repair	270.00
Removal of the tenants' belongings	290.00
Filing fee	100.00
<b>Total</b>	<b>2,960.00</b>

Residential Tenancy Branch Policy Guideline 17 sets guidance for a set-off when there are two monetary awards:

1. Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order.
2. 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.

In summary:

Award for the tenants	\$1,000.00
Award for the landlords	\$2,960.00
<b>Final award for the landlords</b>	<b>\$1,960.00</b>

Conclusion

Pursuant to sections 26, 67 and 72 of the Act, I grant the landlords a monetary order in the amount of \$1,960.00.

The landlords are provided with this order in the above terms and the tenants must be served with this order. Should the tenants 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 20, 2021

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Residential Tenancy Branch