



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- Authorization to recover the filing fee from the tenants pursuant to section 72;
- A monetary award for damages and loss pursuant to section 67; and
- Authorization to retain the deposit for this tenancy pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the deposit for this tenancy?

Is the landlord entitled to recover their filing fee from the tenants?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This fixed-term tenancy began on March 1, 2021 and was scheduled to end on February 28, 2022. The monthly rent was \$2,450.00 payable on the first of each month. A security deposit of \$1,225.00 was collected at the start of the tenancy and is still held by the landlord. A copy of the signed tenancy agreement was submitted into evidence. A clause in the addendum to the tenancy agreement provides that pets are not allowed.

The parties agree that the landlord issued a Notice to End Tenancy to the tenant shortly after the tenancy commenced. Neither party provided a copy of the notice into documentary evidence. Neither party could recall the effective date provided on the Notice. The landlord testified that they issued multiple notices for a variety of reasons including the tenant having a pet as well as failing to pay full rent when it was due.

The tenant paid the amount of \$1,225.00 for the period of April 1<sup>st</sup> to the 15<sup>th</sup> during which they occupied the rental unit and moved out on April 12, 2021. The parties participated in a move out inspection and a condition inspection report was prepared. The parties disagreeing on the condition of the rental unit and the tenant did not provide authorization that the landlord could retain any portion of the deposit.

The parties agree that the tenant provided a forwarding address in writing to the landlord on or about April 12, 2021. The landlord filed their present application on April 15, 2021.

The landlord submits that the rental unit required some cleaning and noted in the condition inspection report that the bathroom was dirty and the bedroom required carpet cleaning. The landlord seeks a monetary award in the amount of \$212.50 for the cost of cleaning. The landlord also seeks an award of \$1,225.00 which they say is the rental arrear for April 2021.

### Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In the present case the parties gave evidence that the tenant provided a forwarding address on or about April 12, 2021 and the landlord filed their application for dispute resolution on April 15, 2021. I therefore find that the landlord was within the statutory timeline to file an application for authorization to retain the deposit.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept that there was an enforceable tenancy agreement between the parties wherein the tenant was obligated to pay rent in the amount of \$2,450.00 on the first of each month and they were prohibited from having pets in the rental unit. I accept the undisputed evidence that the tenant failed to pay full rent on April 1, 2021 and there is a rental arrear of \$1,225.00 for this tenancy.

While the parties gave some evidence that the landlord issued a Notice to End Tenancy, neither party provided a copy into documentary evidence and both parties gave vague, uncertain testimony about the contents of any such notice. I find the testimony of the parties to be insufficient to establish that there is any basis for the tenant to withhold payment of the full rent required under the agreement.

I find that the tenant was obligated to pay rent in the amount of \$2,450.00 on April 1, 2021 and failed to pay the full amount required. I accept that there is a rental arrear of \$1,225.00 for this tenancy and issue a monetary award in that amount accordingly.

I further accept that the parties participated in a move-out inspection of the rental suite on April 12, 2021 though the tenant did not sign the condition inspection report as they disagreed with the landlord's assessment of the suite condition.

Residential Tenancy Regulation 21 provides that a condition inspection report completed in accordance with the legislation is evidence of the state of repair of a rental unit unless there is a preponderance of evidence to the contrary.

I accept that the rental unit required some work due to the tenancy. I am satisfied, on a balance of probabilities, with the landlord's evidence consisting of the condition inspection report, some photographs of the suite and their testimony. I find the tenant's testimony, not supported in any documentary evidence, to be of little assistance. I further find the tenant's reference to video evidence which they failed to submit to be of no probative value.

I am not satisfied that the landlord has established the full amount of their monetary claim. I am satisfied that the rental unit required professional cleaning of the carpets at an expense of \$100.00. I find the receipt submitted into evidence by the landlord to be sufficient to establish their monetary losses. I therefore issue a monetary award in that amount.

I am not satisfied with the balance of the landlord's claim for taking out the garbage or time spent cleaning.

The landlord's testimony is that garbage disposal refers to taking materials from the rental unit to the building's garbage bins. I find the description of the work to be not commensurate with the amount claimed by the landlord of \$12.50 in their application.

Similarly, I find little evidence in support of the landlord's claim for the time spent cleaning the rental unit or basis for the hourly rate claimed. I find that the landlord has not met their evidentiary onus on a balance of probabilities to establish the portions of their claim for cleaning and garbage disposal. Accordingly, I dismiss these portions of the application.

As the landlord was partially successful in their claim I find that they are entitled to recovery of \$50.00, half of their filing fee for this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$150.00. The tenant must be served with this Order as soon as possible. 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.

The balance of the landlord's application is dismissed without leave to reapply.

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: September 9, 2021

---

Residential Tenancy Branch