



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MDCL-S, MNDL-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 Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### 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 following are agreed facts: the tenancy under written agreement started on October 1, 2020 on a fixed term to end September 30, 2021. At the outset of the tenancy the Landlord collected \$650.00 as a security deposit. The Parties mutually conducted a move-in report with a copy of the completed report provided to the Tenants. Rent of \$1,300.00 was payable on the first day of each month. On March

30, 2021 the Tenants informed the Landlord that they were moving out of the unit on April 1, 2021 and did move out on that date. On April 2, 2021 the Parties mutually conducted a move-out inspection with a completed report that also contained the Tenants' forwarding address. No rent was paid for April 2021.

The Landlord claims unpaid rent of \$1,300.00 for April 2021. The Tenant submits that the Landlord refused to conduct the move-out inspection on April 1, 2021.

The Landlord states that the unit was advertised sometime around April 7, 2021. The Landlord states that the advertisement was made online for rent of \$1,300.00. The Landlord states that although several persons contacted the Landlord about the unit, there was either no follow-up by these persons or they had pets which the Landlord did not allow. The Landlord states that maybe the end of May 2021 "or something like that" the Landlord reduced the rental rate to \$1,200.00. The Landlord states that a new tenancy was not entered into until July 1, 2021. The Landlord provides no supporting evidence of advertising or renting the unit. The Landlord claims \$6,500.00 in lost rental income.

The Landlord states that the Tenants left a kitchen cabinet damaged and claims \$40.80 for the for the Landlord's costs of materials and the Landlord's labour for the repairs. No invoice was provided for these costs. The Landlord states that the costs were for replacing a damaged strip on the top inside edge of a cabinet door. The Landlord states that the unit was built in 2008. The Tenant states that this damage was pre-existing and was not seen at the move-in inspection as the cupboards were not opened to show the damage.

The Landlord states that the Tenants left the unit unclean and claims \$151.20 for the cleaning costs. The Landlord states that a cleaner was paid \$100.00 in cash for this cleaning and that no receipt was obtained or provided for this claim. The Landlord

provides a copy of the move-out report. The Tenant states that the unit was left clean by the Tenants. The Tenants provide photos of the unit.

### Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Section 44(1)(d) of the Act provides that a tenancy ends if the tenant vacates or abandons the rental unit. Given the undisputed evidence that the Tenants moved out of the unit on April 1, 2021 I find that the tenancy ended on that date and that rents payable under the tenancy also ended on that date. As the Tenant occupied the unit for one day in April 2021, I find that the Landlord is entitled to rent of **\$43.33** ( $1300/30 \text{ days} = 43.33 \text{ per day}$ ).

Section 45(2) of the Act provides that a tenant may end a fixed term 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,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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.

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 evidence that the Tenants failed to provide the Landlord with the required notice to end the tenancy, I find that the Tenant did not comply with the Act. Given that the Landlord was only given 24 hours notice I consider that the Landlord would not reasonably have been able to find another Tenant for the rest of April 2021 and for this reason I find that the Landlord has

substantiated that the Tenants, by their breach of the Act, caused the lost rental income for April 2 to 30, 2021 inclusive of **\$1,256.67** (1,300.00 - 43.33). The Landlord is therefore entitled to this amount.

The Landlord's evidence of advertising the unit is vague and unsupported. As a result, I find the Landlord's oral evidence of advertising the unit to be insufficient to substantiate that they took reasonable steps to mitigate the rental loss claimed past April 30, 2021. Further, the Landlord's evidence is that a new tenant was obtained for July 2021 and the Landlord did not amend its claim to reduce the amount claimed against the Tenants or provide supporting evidence of this new tenancy. For these reasons I find that the Landlord has not substantiated its claim for \$6,500.00 and I dismiss this claim.

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. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must also prove that costs for the damage or loss have been incurred or established. Given the photo of the cupboard door strip showing minor damage and considering the age of this strip, I find on a balance of probabilities that the damage is only reasonable wear and tear for which the Tenants are not liable. I also consider that the Landlord did not provide any supporting evidence for the costs claimed. For these reasons I dismiss the claim for costs to repair the strip. The move-out report indicates only a few minor misses and the photos show an otherwise reasonably clean unit. For this reason and given the lack of an invoice detailing the cleaning done for the costs being claimed, I find on a balance of probabilities that the Landlord has not substantiated the costs claimed. I dismiss this claim.

As the Landlord's claim for rental monies has met with some success, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of

**\$1,400.00.** Deducting the security deposit plus zero interest of **\$650.00** leaves **\$750.00** owed by the Tenants to the Landlord.

Conclusion

**I order** that the Landlord retain the **deposit** and interest of \$650.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$750.00**. 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: October 20, 2021

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Residential Tenancy Branch