



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAPLE LEAF PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

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

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order in the amount of \$3,408.69 for unpaid rent or utilities, for damages to the unit, site or property, for money owing for compensation under the Act or regulation, to retain the tenants' security deposit and pet damage deposit towards any amount owing, and to recover the cost of the filing fee.

This hearing began on May 21, 2021 and after 45 minutes, the hearing was adjourned to allow additional time for the parties to present their testimony, documentary and digital evidence and for service of required evidence as noted in the Interim Decision. An Interim Decision was issued dated May 21, 2021, which should be read in conjunction with this decision. On September 21, 2021, the hearing continued and after an additional 40 minutes, the hearing concluded.

The tenants, a primary agent for the landlord, SS (agent), a second agent for the landlord AT, (second agent), and a property manager for the landlord, SL (property manager) attended the teleconference hearing and gave affirmed testimony/submissions. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing.

I am satisfied on service of the landlord's evidence on the tenants, based on the registered mail documentation before me and the fact that the tenants stated that they got too busy to send rebuttal evidence. Therefore, I have considered all of the evidence submitted for my consideration and presented during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing and my findings. Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matters

The parties were informed that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenants' security deposit and pet damage deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on March 1, 2020 and was scheduled to revert to a month-to-month tenancy after February 28, 2021. Monthly rent was \$2,770.00 per month, which included a \$250.00 per month discount for the full 12-month fixed-term as the original rent was supposed to be \$3,020.00 per month. Although the agent attempted to increase their claim during the hearing by requesting to recover the discounted portion of the rent, this was not permitted as I find that to do so would unfairly prejudice the tenants who have the right to know the claim against them before the hearing, which is one of the Principles of Natural Justice. In addition, RTB Rule 2.9 does not allow the dividing of a claim, so I do not grant leave to apply for the discounted portion of rent as the landlord's application was already filed on January 19, 2021.

The tenants paid a security deposit of \$1,510.00 and a pet damage deposit of \$1,510.00, at the start of the tenancy for a total of \$3,020.00 in combined deposits (combined deposits).

The landlord's monetary claim for \$3,408.69 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Fixing loading bay gate	\$218.69
2. Move out cleaning	\$70.00
3. Patching and fixing walls	\$100.00
4. December outstanding rent (portion owing)	\$1,410.00
5. Liquidated damages	\$1,510.00
6. Filing fee	\$100.00
<b>TOTAL</b>	<b>\$3,408.69</b>

Regarding item 1, the landlord has claimed \$218.69 based on the tenants damaging the loading bay gate, which had to be repaired. The agent testified that the tenants went over their booked moving time by ½ hour and when the moving van the tenants hired left, it backed into the loading bay gate, which was witnessed by the building concierge. The tenants did not deny that the moving company they hired damaged the loading bay gate. The tenants responded by stating that they hired a professional company. The landlord submitted a gate repair invoice in the amount claimed.

Regarding item 2, the landlord has claimed \$70.00 for the cost to clean the rental unit after the tenants vacated on December 15, 2020. The agent testified that the rental unit was brand new at the start of the tenancy and referred to many colour photos submitted in evidence to support that at the end of the tenancy, the tenants left a dirty oven, windows edges were not cleaned, the hood vent was dirty, the outside deck was dirty. At the reconvened hearing, the agent did not have their photo evidence, so the tenants responded to this item.

The tenants' response to this item was that when they moved into the patio was already dirty and the tenants believe that the photo evidence shows normal wear and tear and claim that they did clean the rental unit before they vacated.

Regarding item 3, the landlord has claimed \$100.00 to patch and fix walls that the agent stated were damaged by the tenants and not repaired before they vacated. The agent stated there were excessive nail holes in the rental unit after the tenants left; however, were unable to refer to any photo evidence to support this testimony. I will address the landlord's photo evidence later in this decision. The agent stated that they received 3

quotes and that they chose the cheapest quote at \$100.00. The agent submitted an invoice for painting in the amount claimed.

The tenants' response to this item was that they deny putting any nail holes in the walls and that the landlord is not correct. The tenants also stated that they used adhesive hooks and peel off hangers that left no holes and deny their allegation for this item.

Regarding item 4, the landlord is claiming for half of December 2020 rent in the amount of \$1,385.00 plus a NSF fee of \$25.00 for the rent cheque that was returned for December 2020 as Non-Sufficient Funds (NSF). The total of the two amounts equals \$1,410.00. The agent stated that the tenants breached their fixed-term tenancy by leaving early on December 15, 2020 when the fixed-term did not expire until February 28, 2021. The agent stated that a new tenant was found who moved in on March 1, 2021.

The tenants confirmed they did not pay half of December 2020 rent because they gave written notice to the landlord on November 14, 2020 via email that they would be vacating on December 15, 2020, which I will address further in my analysis below. The tenants also alleged various security concerns leading up to their eventual notice but failed to supply a copy of any emails or letters to support their concerns. The tenants stated that they got too busy to send rebuttal evidence.

The agent stated that the tenants did not give the landlord any reasonable notice of security concerns and a reasonable opportunity to address any security concerns. The agent also stated that the tenants made no previous complaints prior to November 2020, including in any conversations with the tenants. Although the tenants claim they did, the tenants provided no supporting documentary evidence in support.

The agent stated that once the complaints came in November 2020, the agent would check with the concierge and checked the cameras and the camera footage showed that most of the complaints were not true based on the camera footage. The agent also stated that the building was built in 2019, so is not an old building and that electricians and maintenance people are in the building to deal with any issues that might arise but that the building is not old or unsafe.

Regarding item 5, the agent referred to clause 5 of the tenancy agreement, which reads:

5. **LIQUIDATED DAMAGES.** If the Tenant breaches a material term of this Agreement that causes the Landlord to end the tenancy before the end of any fixed term, or if the Tenant provides the Landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the Tenant will pay the Landlord the sum of \$ 1510 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the Landlord from claiming future rental revenue losses that will remain unliquidated.

The agent also stated that the tenant reviewed the lease with them in November 2020 and stated that they wanted to move out, at which time the agent reminded the tenant that they signed a fixed-term tenancy, were given a discount for the 12 months for signing the fixed-term and that they would owe liquidated damages if they broke the lease. The agent stated that while they attempted to re-rent the rental unit and did their best, that due to COVID they had a very slow month.

The tenant's response was that \$1,510.00 was not the actual cost to re-rent as they claim the landlord never showed the unit once and also stated that nothing was done about their concerns prior to leaving. One of the tenants stated that they had a newborn so had no intention to leave but had to due to safety issues.

Regarding item 6, the filing fee of \$100.00 will be addressed later in this decision.

### Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

**Item 1** - The landlord has claimed \$218.69 for a damaged loading bay gate. The tenants did not deny that the moving company they hired damaged the loading bay gate. Given the invoice before me and that the tenants did not deny that the moving company they hired damaged the loading bay gate, I find the tenants are liable for the damage caused by their movers. As a result, I find the landlord has met the burden of proof and I award the landlord **\$218.69** for this portion of their claim.

**Item 2** - The landlord has claimed \$70.00 for the cost to clean the rental unit after the tenants vacated on December 15, 2020. Having reviewed the photo evidence supplied by the landlord I find the tenants did not leave the rental unit in a reasonably clean condition, which violates section 37(2)(a) of the Act. I find the photos show a dirty oven, dirty windows edges, a dirty hood vent, and a dirty outside deck. I afford no weight to the tenants' claim that the deck was dirty at the start of the tenancy as section 37(2)(a) of the Act still requires the rental unit, which includes the deck to be left reasonably

clean. Therefore, based on the above, I award the landlord **\$70.00** as claimed for cleaning costs, which I find to be reasonable.

**Item 3** - The landlord has claimed \$100.00 to patch and fix walls that the agent stated were damaged by the tenants and not repaired before they vacated. Although the agent stated there were excessive nail holes in the rental unit after the tenants left; I note that the tenants disputed that they created nail holes and instead used adhesive hooks that could be removed from the walls without damage. Given the lack of supporting photo evidence, which I find only supports that adhesive hooks were used, I dismiss this item, due to insufficient evidence, without leave to reapply. I find the landlord did not meet the burden of proof for this item.

**Item 4** - The landlord is claiming for half of December 2020 rent in the amount of \$1,385.00 plus a NSF fee of \$25.00 for the rent cheque that was returned for December 2020 as Non-Sufficient Funds (NSF). The total of the two amounts equals \$1,410.00. I agree with the agent that the fixed-term lease did not expire until February 28, 2021, according to the tenancy agreement. I also find the tenants were not permitted to end a fixed-term tenancy by sending an email dated November 14, 2020 to end the tenancy on December 15, 2020, which I will explain further below.

Firstly, rent was due on the first day of each month and section 45(2) of the Act applies and states:

**Tenant's notice**

**45(2)** 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.**

[Emphasis added]

In the matter before me, I find the tenants could not give notice to end the tenancy before February 28, 2021, and that they owe the other half of rent for December 2020. I also note that the agent affirmed that they could only secure tenants who moved into the rental unit as of March 1, 2021. I also note that the landlord's application was filed on January 19, 2021 and that the landlord has since suffered a loss of January and

February 2021 rent; however, the landlord did not amend their claim for unpaid rent or loss of rent for January and February of 2021.

Given that RTB Rule 2.9 states that you cannot divide a claim and given that the application before me was not amended before the first hearing date of May 21, 2021, I do not grant the landlord loss of rent for January and February 2021 rent. The tenants should be aware; however, that had the application been amended, they would also owe loss of rent for January and February of 2021 as I afford very little weight to the tenants' allegation provided verbally regarding security concerns as they failed to submit any written documentation to support those security concerns. In addition, even if the tenants had, I find the tenants failed to provide a reasonable period of time for the landlord to address their security concerns.

As a result of the above, I grant the landlord **\$1,410.00** for this item as claimed, which includes the \$1,385.00 unpaid portion of December 2020 rent, plus the \$25.00 NSF fee. I find the landlord has met the burden of proof by proving that the tenants breached section 26 of the Act, which states that December 2020 rent was due in full on December 1, 2020.

**Item 5** - The agent referred to clause 5 of the tenancy agreement, which I have reviewed and which I find clearly states that the tenants were aware of the \$1,510.00 amount they would be charged if they broke the fixed-term lease. I find the tenants did breach the fixed-term lease. Therefore, I grant the landlord **\$1,510.00** in liquidated damages as the amount I find to be reasonable given the monthly rent of \$2,770.00, which includes a \$250.00 discount for signing a fixed-term lease. If the tenants wanted to avoid the liquidated damages, they should have waited until the end of the fixed-term and gave proper notice under the Act instead of breaching the fixed-term tenancy.

**Item 6** - As the landlord's claim had merit, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

Based on the above, I find the landlord has established a total monetary claim of **\$3,308.69** comprised of \$218.69 for item 1, \$70.00 for item 2, \$1,410.00 for item 4, \$1,510.00 for item 5 and \$100.00 for item 6. Pursuant to sections 38 and 67 of the Act, I grant the landlord authorization to retain the tenants' combined deposits of \$3,200.00 in partial satisfaction of the landlord's monetary claim. Pursuant to section 67 of the Act, I grant the landlord a monetary order for the pursuant to section 67 of the Act, for the balance owing by the tenants to the landlord in the amount of **\$108.69**.

### Conclusion

The landlord's claim is mostly successful.

The landlord has established a total monetary claim of \$3,308.69. The landlord has been authorized to retain the tenants' combined deposits of \$3,200.00, which have accrued \$0.00 in interest, in partial satisfaction of the landlord's monetary claim pursuant to sections 38 and 67 of the Act.

The landlord is granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenants to the landlord in the amount of \$108.69. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. This decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 4, 2021

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Residential Tenancy Branch