



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

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

### **Introduction**

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by landlord pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38;
- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord was represented at the hearing by accounts payable manager, DS ("landlord"). The tenants attended the hearing with their son/interpreter, BM. The male tenant BM ("tenant") spoke on behalf of both tenants.

As all parties were present, service of documents was confirmed. The tenant acknowledged service of the landlord's application for dispute resolution and stated he had no concerns with timely service of documents.

The landlord testified that she did not receive the tenant's evidence. The tenant testified that he sent the landlord a copy of his evidence package by expresspost mail on November 9<sup>th</sup>. The mail was returned to the tenant as undelivered as the landlord had moved. The landlord acknowledged moving offices on November 15<sup>th</sup> however they were still receiving mail at the old address. I determined that even if I

were to deem the tenant's evidence served upon the landlord five days after being sent by registered mail, it would be deemed served on November 14<sup>th</sup>. If the tenant were to comply with Rule 3.15 of the Rules of Procedure, it must be received at least seven days before the hearing, or by November 12<sup>th</sup>. As the tenant did not comply with sending his evidence in time for the hearing, and because it was sent by Expressmail post and not registered mail, I ruled the tenant's documentary evidence would be excluded from consideration in this decision.

The parties were informed at the start of the hearing 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*.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and damages?

Can the landlord retain the tenant's security deposit?

Can the landlord recover the filing fee?

#### Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The tenancy began on November 16, 2018 with rent set at \$600.00 per month payable on the first day of each month. A security deposit of \$300.00 was collected by the landlord which the landlord continues to hold. A condition inspection report was done at the commencement of the tenancy.

The landlord gave the following testimony. On February 17<sup>th</sup>, the tenant came into the office and advised the landlord that he would be terminating the tenancy effective March 6<sup>th</sup>. On that day, the tenant signed a document with the landlord which authorizes the landlord to conduct the move-out condition inspection report in his absence to determine the condition of the rental unit. In the event damages are found, the tenant authorizes the landlord to deduct those damages from his security deposit of \$300.00 and requests that the balance be sent by cheque to the tenant's forwarding address. A copy of the document was not provided to me for the hearing, however the landlord read the contents into the record and the tenant acknowledges a copy was provided to him in the landlord's evidence. During the hearing, the tenant acknowledges signing this document on February 17<sup>th</sup>, but testified he did not read the document before signing it.

When the landlord conducted the condition inspection report on March 10<sup>th</sup>, the landlord noted the rental unit was overall dirty and requires a full cleaning including a steam clean. Wall damage was noted in the living room, there were large furniture marks in the bedroom requiring paint and there are burnt out light bulbs. Garbage also needed to be taken out. The landlord provided copies of invoices for the work to be done and the invoices come to a total of \$881.75. The work was all done in-house. The landlord did not provide any photographs of the unit to show it's state at the time of the condition inspection.

The landlord testified that since the tenant gave notice in the middle of February, the tenant is required to pay rent for the month of March. The landlord tried to collect the rent for March by pre-authorized payment from the tenant's bank however the tenant's bank wouldn't honour the payment. The landlord seeks march rent of \$600.00 plus a \$25.00 fee for bank charges.

The landlord testified that she received the tenant's forwarding address by email for the first time on May 14, 2021. The landlord filed for dispute resolution three days later, on May 17, 2021.

The tenant gave the following testimony. He disputes that he gave notice on February 17<sup>th</sup>, stating it was provided on February 2<sup>nd</sup>. Moving out on March 6<sup>th</sup> was done as a favour to the landlord who wanted the suite vacant as soon as possible. The landlord's representative told the tenant that he would only be charged for six days for March because he only occupied the unit for six days.

The tenant argues that there were three inspections, once of February 17<sup>th</sup>, once on February 28<sup>th</sup> and another on March 5<sup>th</sup> and he was present at all three. His understanding in signing the February 17<sup>th</sup> letter was that the landlord would deduct funds from the security deposit if any extra cleanup was required. The tenant testified he felt the rental unit was sufficiently clean and dropped the keys off at the landlord's office on March 6<sup>th</sup>.

The tenant acknowledges doing a stop-payment on the landlord's removal of \$600.00 from his bank account, stating that the landlord is not entitled to that, having agreed to only charge him for the first six days in March. The tenant also testified that when the landlord inspected the unit on February 28<sup>th</sup>, he was informed that everything looks good. Again in March 5<sup>th</sup>, the landlord came to the unit and said all is good and wished him good luck. The tenant argues that the unit was clean when he moved out and that he shouldn't be charged for additional cleaning.

The landlord gave rebuttal testimony indicating that a pre-move out inspection was done on February 17<sup>th</sup> to advise the tenant of what repairs needed to be done before he moved out. There is no record of inspections for this rental unit on February 28<sup>th</sup> or March 5<sup>th</sup>.

### Analysis

Section 45(1) of the *Act* states:

#### **45 Tenant's notice**

(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.

In other words, the landlord must be given a full month's notice that the tenancy will end and it must be given to the landlord at least a full month before the date the tenant plans on leaving.

The parties disagree on when the tenant gave his notice to end tenancy, either on February 2<sup>nd</sup> or February 17<sup>th</sup>. The notice provided as evidence by the landlord simply indicates it was signed in February. Either way, the tenant's notice was not served in compliance with section 45. The notice seeks to end the periodic (month to month) tenancy with less than a full month's notice, contrary to section 45(1)(a).

Further, since rent is payable on the first day of the month, the notice should have been served before the end of January if the tenant sought to end the tenancy on March 6<sup>th</sup> pursuant to section 45(1)(b). Section 45 of the *Act* is repeated in clause 14 of the tenancy agreement which states:

*The tenant may end a monthly, weekly or other periodic tenancy by giving the landlord at least one month's written notice. A notice given the day before the rent is due in a given month ends the tenancy at the end of the following month. [For example, if the tenant wants to move at the end of May, the tenant must make sure the landlord receives written notice on or before April 30th.]*

The tenant's notice to end tenancy is therefore not compliant with section 45 and I find the tenant is obligated to compensate the landlord with rent for the month of March in the amount of **\$600.00**. Pursuant to section 67 of the *Act*, I award the landlord that amount.

Section 7 of the Residential Tenancy Regulations allows a landlord to collect service fees charged by a financial institution for the return of a tenant's cheque. The landlord tried to collect the rent for March which I find was appropriate due to the fact that the tenant was responsible for paying the full month of March's rent. As the tenant reversed the charge, I find the landlord is entitled to recover the \$25.00 fee pursuant to section 7 of the Regulations. Pursuant to section 67 of the *Act*, the landlord is awarded **\$25.00**.

The landlord seeks to recover a total of \$881.75 for paint& drywall repairs, bulb replacement, garbage removal, suite cleaning and steam cleaning. Section 37(2)(a) states 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.

This notion is further elaborated in Residential Tenancy Branch Policy Guideline PG-1 which states:

*the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. 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 or Manufactured Home Park Tenancy Act (the Legislation).***

*(emphasis in bold added)*

The tenant's legal obligation is "reasonably clean" and this standard is less than "perfectly clean" or "impeccably clean" or "thoroughly clean" or "move-in ready". Oftentimes a landlord wishes to turn the rental unit over to a new tenant when it is at this higher level of cleanliness; however, it is not the outgoing tenant's responsibility to leave it that clean. If a landlord wants to turn over the unit to a new tenant at a very high level of cleanliness that cost is the responsibility of the landlord.

Although the landlord provided a condition inspection report showing the unit was "dirty" and required repainting, the landlord did not supply any photographs to satisfy me that the rental unit suffered from any extraordinary damage beyond reasonable wear and tear. I decline to award these damages to the landlord for paint& drywall repairs, bulb replacement, garbage removal and suite cleaning.

The same policy guideline PG-1 states under the heading of carpets:

*The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.*

This tenant lived in the rental unit for more than two years and I heard no testimony from the tenant that he steam cleaned or shampooed the carpets at the end of the tenancy. I award the landlord the cost of the carpet cleaning in the amount of **\$157.50**.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The landlord continues to hold the tenant's security deposit in the amount of \$300.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary order I have awarded.

Item	Amount
March 2021 rent	\$600.00
Financial institution service charge	\$25.00

Carpet cleaning	\$157.50
Filing fee	\$100.00
Less security deposit	(\$300.00)
<b>Total</b>	<b>\$582.50</b>

Conclusion

Pursuant to section 67 of the *Act*, I issue a monetary order in the landlord's favour in the amount of \$582.50.

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: November 23, 2021

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Residential Tenancy Branch