



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing dealt with the adjourned Application for Dispute Resolution filed by the Landlords under the Residential Tenancy Act (the “Act”) for a monetary order for unpaid rent or utilities, for a monetary order for damages and losses, permission to retain the security deposit and an order to recover the cost of filing the application. The matter was set for a conference call.

One of the Landlord’s and their Agent (the “Landlord”) attended the hearing and were reminded that their affirmation from October 19, 2021, carried forward to today's proceedings. As the Tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. I have reviewed the file for this hearing and noted that the Residential Tenancy Branch mailed the Notice of Dispute Resolution Hearing document to the Tenants on October 19, 2021. As the Tenants were served the Notice of Dispute Resolution Hearing documentation by the Residential Tenancy Branch, I find that the Tenants had been duly notified of the Notice of Hearing in accordance with the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to monetary order for unpaid rent and utilities?
- Is the Landlord entitled to monetary order for damage and losses?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to recover the filing fee for this application?

### Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that the tenancy began on February 1, 2020. Rent in the amount of \$1,800.00 was payable on the first day of each month, and the Tenants paid a security deposit of \$900.00 and a pet damage deposit of \$400.00 at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that the Tenants moved out of the rental unit on December 31, 2020, without notice. The Landlord testified that their Agent conducted the move-out inspection on January 4, 2021, without the Tenants, as the Tenant refused to attend the inspection. The Landlord submitted a copy of the inspection report and 21 pictures of the rental unit at the end of the tenancy into documentary evidence.

The Landlord is requesting the last month's rent of the tenancy agreement for January 31, 2021. The Landlord testified that they live out of town and that due to this, they were unable to make attempts to re-rent the rental unit after the end of the term of the tenancy agreement.

The Landlord testified that the Tenants returned the rental unit to them with \$545.88 in damage, consisting of \$157.50 to repair an electronic deadbolt, \$84.09 to repair the

patio, \$109.00 to repair the dishwasher, \$94.50 to reinstall a smoke detector and \$100.79 to replace a broken light fixture.

The Landlord testified that the Tenants had cut the wires for the electronic deadbolt for the rental unit and that it cost them \$157.50 to have the deadbolt repaired. The Landlord submitted an invoice for the deadbolt repair into documentary evidence.

The Landlord testified that the Tenants had installed a metal frame to the patio of the rental unit without the Landlord's permission and leaving it attached at the end of the tenancy. The Landlord testified that it cost them \$84.09 to have the metal frame removed. The Landlord submitted an invoice for the frame removal into documentary evidence.

The Landlord testified that the dishwasher was noisy at the end of the tenancy and that it cost them \$109.00 to have the dishwasher repaired. The Landlord submitted an invoice for the dishwasher repair into documentary evidence.

The Landlord testified that the smoke detector of the rental unit had been disconnected and removed from the wall at the end of tenancy. The landlord testified that they purchased and installed a new smoke detector at the cost of \$94.50.

The Landlord was asked why they had not reinstalled the old smoke detector; the Landlord initially testified that the smoke detector was gone at the end of the tenancy but then changed their testimony, after a review of their picture evidence, stating the old smoke detector was there at the end of tenancy. The Landlord offered no testimony as to why the old smoke detector could not have been reinstalled.

The Landlord testified that the light fixture in the bathroom was not working at the end of the tenancy and that it cost them \$100.79 to buy and install a new light. The Landlord was asked to provide the age of the broken light fixture; the Landlord testified that the light fixture was at least 15-year-old. The Landlord submitted an invoice for the light fixture replacement into documentary evidence.

The Landlord testified that the Tenants returned the rental unit to them uncleaned and requested \$815.75 in the recovery of their cleaning cost at the end of the tenancy, consisting of \$420.00 in cleaning services and \$395.75 for carpet cleaning. The Landlord submitted two invoices for cleaning into documentary evidence.

The Landlord also testified that they are requesting an additional \$128.63 for the second round of carpet cleaning. The Landlord was asked to explain why the carpets required a second cleaning. The Landlord testified that they had not moved furniture for the initial cleaning and that they discovered the carpet under the furniture needed to be cleaned as well. The Landlord submitted an invoice for the second carpet cleaning into documentary evidence.

The Landlord testified that when they were speaking to the Tenants at the end of the tenancy, the Tenants had stated that there were animals in the attic. The Landlord testified that due to this statement, they had the attic inspected, but no animals were found during this inspection. The Landlord testified that they are seeking to recover the cost of this inspection from the tenants was a \$78.75 attic inspection.

The Landlord testified that the Tenants returned the rental unit to them with \$2,246.62 in missing items, consisting of \$131.96 for missing bedding, \$1,808.00 for a missing chair, \$109.99 for a missing lamp, \$39.99 for a missing step stool, \$96.25 for a missing dresser, \$60.43 for missing doormats and a pail.

The Landlord testified that as per the tenancy agreement, page two, section three, the rental unit was rented to the Tenants furnished. The Landlord was asked to provide a detailed account of what furniture had been rented in this tenancy. The Landlord testified that they did not make a list of the furnishing included in the tenancy in either the tenancy agreement or on the move-in inspection report.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the parties entered into a one-year fixed term tenancy, beginning on February 1, 2020, in accordance with the *Act*.

I accept the testimony and the documentary evidence submitted by the Landlord, and I find that the Tenants ended their tenancy early on December 31, 2021. Section 45(2)(b) of the *Act* states that a tenant cannot end a tenancy agreement earlier than the date specified in the tenancy agreement.

***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.*

I find that this tenancy could not have ended in accordance with the *Act* until January 31, 2018. I find that the Tenants failed to comply with the *Act* when they ended this tenancy early on December 31, 2021.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“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. 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.

In this case, I find that the Tenants’ breach of section 45 of the *Act* resulted in a loss of rental income to the Landlord and that the Landlord has provided sufficient evidence to

prove the value of that loss. However, section 7(2) of the Act sets out a claimant's responsibility to mitigate, stating the following:

***Liability for not complying with this Act or a tenancy agreement***

*7 (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.*

I find that the Landlord did not act reasonably to minimize their damages or losses due to the Tenants' breach of section 45 of the Act when they made no attempt to try and re-rent the rental unit for at least a portion of January 2021.

I understand that the Landlord had been out of town when the Tenants vacated the rental unit. However, the fact that the Landlord was not in town when the Tenants decided to end their tenancy early does not negate the Landlord's responsibility to mitigate their losses by taking the appropriate steps to attempt to re-rent the unit as soon as possible. I find that the Landlords made no attempt to re-rent the rental unit.

Due to this, I find that the Landlord was in breach of section 7(2) of the Act when they did not take steps to try and re-rent the rental unit after being notified that the Tenants had ended the tenancy early. Therefore, I dismiss the Landlords' claim for the recovery of the loss of rental income for January 2021.

Regarding the Landlord's claim for compensation in the amount of \$815.75 in the recovery of their cleaning cost at the end of the tenancy, consisting of \$420.00 in cleaning services and \$395.75 for carpet cleaning, I accept the testimony of the Landlord supported by their picture evidence that the Tenants returned the rental unit in an unclean state at the end of the tenancy. Section 37(2) of the Act requires that a tenant return the rental unit reasonably clean at the end of the tenancy.

***Leaving the rental unit at the end of a tenancy***

***37 (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, and*

*(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

I find that the Tenant breached section 37 of the *Act* when they returned the rental unit to the Landlord uncleaned. I also find that the Landlord has provided sufficient documentary evidence to show that they suffered a loss of \$815.75 due to the Tenants' breach of the *Act*. Therefore, I award the Landlord the return of her costs for cleaning and carpet cleaning in the amount of **\$815.75**.

As for the Landlord's claim for the second carpet cleaning in the amount of \$128.63, as stated above, a claimant is required to make attempts to mitigate all loss; after a review of the Landlord's testimony on this point of their claim, I find that the Landlord's failure move furniture during an initial carpet cleaning, to ensure that all areas are cleaned during that first cleaning, to be a failure to mitigate their loss. Therefore, as the Landlord did not mitigate their losses for carpet cleaning, I must dismiss the Landlord's claim to recover their cost for a second carpet cleaning in the rental unit.

The Landlord has also claimed for compensation in the amount of \$244.59 in the recovery of their repair costs at the end of the tenancy, consisting of \$157.50 for electronic deadbolt repair and \$84.09 to remove a metal frame from the patio; I accept the testimony of the Landlord supported by their picture evidence that the Tenants had returned the rental unit in a damaged state at the end of the tenancy. I find that the Tenants breached section 37 of the *Act* when they returned the rental unit to the Landlord damaged. I also find that the Landlord has provided sufficient documentary evidence to show that they suffered a loss of \$244.59 due to the Tenants' breach of the *Act*. Therefore, I award the Landlord the return of their costs for these two repairs in the amount of **\$244.59**.

The Landlord has also claimed for \$100.79 to replace a light fixture; I accept the testimony of the Landlord supported by their documentary evidence that the Tenants had returned the rental unit with a damaged light fixture at the end of the tenancy. I find that the Tenants breached section 37 of the *Act* when they returned the rental unit to the Landlord damaged. I also find that the Landlord has provided sufficient documentary evidence to show that they suffered a loss of \$100.79 due to the Tenants' breach of the *Act*. However, for this point of the Landlord's claim, I must also take into account the age of the light fixture. The Residential Tenancy policy guideline #1 Landlord & Tenant – Responsibility for Residential Premises states the following:

“Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.”

In order to determine if replacement costs are required for this item, I must refer to the Residential Tenancy Branch guideline # 40 Useful Life of Building Elements. The guideline sets the useful life of light fixtures at 15 years; as the Landlord testified that the light fixture was at least 15-year-old, I find that the broken light fixture was past its natural life expectancy. Therefore, I must dismiss the Landlord’s claim to recover their cost for a new light fixture in its entirety.

As for the Landlord's claim for the purchase and installation of a new smoke detector in the amount of \$94.50, again, as stated above, a claimant is required to make attempts to mitigate all losses. After a review of the Landlord’s testimony and picture evidence on this point of their claim, and in the absence of a reasonable explanation as to why the old smoke detector could not have been reinstalled, I find that on a balance of probabilities, the old smoke detector could have been reinstalled and the Landlord failed to mitigate when they purchased a new smoke detector. Therefore, as the Landlord did not mitigate their losses, I must dismiss the Landlord’s claim to recover their cost for the purchase and installation of a new smoke detector in the rental unit.

The landlord has also claimed for compensation in the amount of \$78.75 in the recovery of their costs for an attic inspection and \$109.00 for a dishwasher repair. As stated above, for a claim to be successful, the Landlord must prove a breach of the *Act*. I have reviewed all of the Landlord’s testimony and documentary evidence, and I find that they have not provided sufficient evidence or testimony, to satisfy me, as to how the Tenants breached the *Act* on either of these points of their claim. As the Landlord has not provided sufficient evidence of a breach of the *Act*, I must dismiss the Landlord’s claim to recover their cost of \$78.75 for an attic inspection and \$109.00 for a dishwasher repair.



Finally, the Landlord is claiming for \$2,246.62 in missing items/furniture, consisting of \$131.96 for bedding, \$1,808.00 for a chair, \$109.99 for a lamp, \$39.99 for a step stool, \$96.25 for a dresser, \$60.43 for doormats and a pail. I have reviewed the totality of the Landlord's documentary evidence, and I find that they did not provide any evidence that they had rented the missing items they have claimed in these proceedings. I acknowledge that the Landlord did indicate on page two of their tenancy agreement that the unit was furnished, but I find that there is no evidence before me to show what furnishings had been included in this tenancy. Where I can understand the allure of including an all-encompassing, nonspecific, and catch-all term in a contract, like "Furniture," I can not overlook the legal rule of *Contra Proferentem*.

*Contra Proferentem* is a rule used in the legal system when interpreting contracts, which basically means that any ambiguous clause contained in a contract will be interpreted against the party responsible for drafting the clause.

I accept the Landlord's testimony that they had drafted this tenancy agreement and chosen not to include an addendum or indicate on the move-in inspecting what furniture was included in this tenancy agreement. As it was the Landlord who was the drafter of this agreement, I find that I must settle the ambiguous nature of the term "Furniture" against the Landlord. Consequently, I find that I am not able to determine what furniture may or may not have been included in this tenancy agreement. Accordingly, I find that I must dismiss the Landlord's claim for compensation due to missing or damaged furniture in its entirety.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been partially successful in their application, I find the Landlord is entitled to recover the \$100.00 filing fee for this application.

Overall, I award the Landlord **\$1,157.34**, consisting of \$157.50 to repair the electronic deal bold, \$84.09 to repair the patio, \$420.00 to clean the rental unit, \$395.75 for carpet cleaning, and \$100.00 in the recovery of the Landlord's filing fee.

I grant the Landlord permission to retain \$1,157.34 from the security deposit for this tenancy in full satisfaction of the award contained in this decision.

I order the Landlord to return the remainder of the Tenants' security deposit, in the amount of \$142.66, to the Tenants within 15 days of receiving this decision.

If the Landlord fails to return the remaining portion of the security deposit to the Tenants as ordered, the Tenants may file for a hearing with this office to recover their security deposit for this tenancy. The Tenants are also granted leave to apply for the doubling provision pursuant to Section 38(6b) of the Act if an application to recover their security deposit is required.

### Conclusion

I find for the Landlord under sections 38, 67 and 72 of the *Act* and award the Landlord \$1,157.34.

I grant the Landlord permission to retain \$1,157.34 from the security deposit for this tenancy in full satisfaction of the award contained in this decision.

I order the Landlord to return the remainder of the Tenants' security deposit, in the amount of \$142.66, to the Tenants within 15 days of receiving this decision.

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 26, 2021

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Residential Tenancy Branch