



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, MNDL-S, FFL

### Introduction

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

- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:57 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord testified that he was not recording this dispute resolution hearing.

The landlord confirmed his email addresses for service of this decision and order.

The landlord testified that he served the tenant with a copy of this application for dispute resolution via email on May 19, 2021. The landlord testified that he served the tenant with a copy of his evidence via email on October 4, 2021.

The serving emails were not entered into evidence. I allowed the landlord 24 hours to upload copies of the serving emails. Within 24 hours of the hearing the landlord entered into evidence the May 19, 2021 and October 4, 2021 emails which showed the date the emails were sent, the email address the documents were sent to and the attachments contained in each email.

The landlord testified that the tenant gave him written authorization to serve via email by way of RTB Form #47. RTB Form #47 Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit, signed by the tenant was entered into evidence and provides the tenant's email address for service. The tenant's email address for service is located on the cover page of this decision.

The email address the May 19 and October 4, 2021 emails were sent to is the same email address located on RTB Form #47. I find that the allowance of late evidence does not prejudice the tenant because the tenant provided the landlord with authorization to serve via email and has access to the serving emails.

Section 89 of the *Act* sets out the approved methods of service for applications for dispute resolution as follows:

- 89** (1)An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
- (a)by leaving a copy with the person;
  - (b)if the person is a landlord, by leaving a copy with an agent of the landlord;
  - (c)by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
  - (d)if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
  - (e)as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
  - (f)by any other means of service provided for in the regulations.

Section 43(2) of the Regulation to the Residential Tenancy Act states:

For the purposes of section 89 (1) (f) [*special rules for certain documents*] of the Act, the documents described in section 89 (1) of the Act may be given to a person by emailing a copy to an email address provided as an address for service by the person.

Residential Tenancy Guideline #12 states:

To serve documents by email, the party being served must have provided an email address specifically for the purposes of being served documents. If there is any doubt about whether an email address has been given for the purposes of giving or serving documents, an alternate form of service should be used, or an order for substituted service obtained.

Pursuant to RTB Form #47 entered into evidence, I find that the tenant provided the landlord with authorization to serve via email. I find that the landlord served the tenant with the landlord's evidence and application for dispute resolution in accordance with section 89(1)(f) of the *Act*.

#### Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on August 1, 2020 and ended on April 30, 2021. This was originally a fixed term tenancy set to end on July 31, 2021. Monthly rent in the amount of \$1,300.00 was payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord filed this application for dispute resolution on May 7, 2021. The landlord testified that he received the tenant's forwarding address in writing on April 30, 2021.

The landlord testified that a One Month Notice to End Tenancy for Cause with an effective date of May 31, 2021 (the "One Month Notice") was posted on the tenant's door. The One Month Notice was entered into evidence. The landlord testified that the tenant filed to dispute the One Month Notice. The file number for the previous dispute is located on the cover page of this decision. The hearing for the previous dispute occurred on July 30, 2021.

The landlord testified that on April 30, 2021 the tenant gave him written notice to vacate the subject rental property effective April 30, 2021. The written notice was entered into evidence. The landlord testified that since the tenant gave him no notice to end tenancy instead of the one-month notice required, the tenant is responsible for May 2021's rent in the amount of \$1,300.00.

The landlord testified that he advertised the subject rental property for rent and was able to find new tenants to move in on either May 15<sup>th</sup> or May 16<sup>th</sup>, 2021. The landlord testified that the new tenancy agreement with the new tenants was at a rental rate of \$1,400.00 per month and that the new tenants paid \$700.00 for the month of May 2021.

The landlord testified that the tenant did not clean the subject rental property very well at the end of the tenancy. The landlord testified that the bathroom, kitchen and all the floors in the subject rental property required cleaning. The landlord testified that he and his wife spent four hours cleaning the subject rental property and are seeking compensation at a rate of \$25.00 per hour for a total of \$200.00.

The landlord entered into evidence a video of the subject rental property taken on May 8, 2021 which shows that the walls, floors and bathroom are dirty. Broken glass can also be seen on the floors in the video.

## Analysis

Under section 7 of the *Act* a landlord or tenant who does not comply with the *Act*, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

Policy Guideline 5 states that where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided. The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring.

Policy Guideline #3 states:

....Compensation is to put the landlord in the same position as if the tenant had complied with the legislation and tenancy agreement. Compensation will generally include any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.....

....In a fixed term tenancy, if a landlord is successful in re-renting the premises for a higher rent and as a result receives more rent over the remaining term than would otherwise have been received, the increased amount of rent is set off against any other amounts owing to the landlord for unpaid rent. The tenant is not entitled to recover any remainder.....

I accept the landlord's undisputed testimony that the tenant ended the fixed term tenancy prior to the end of the fixed term and prior to the effective date of the One Month Notice. I accept the landlord's undisputed testimony that the tenant moved out without providing notice and that the landlord was able to re-rent the subject rental property for \$1,400.00 starting May 15-16, 2021. I find that in renting the subject rental

property out quickly, the landlord mitigated his loss of rental income. I accept the landlord's undisputed testimony that the new tenants paid \$700.00 for May 2021's rent.

I find that the tenant breached the fixed term tenancy agreement by ending the tenancy before the end of the fixed term. I find that this breach resulted in a loss of rental income to the landlord which the landlord is entitled to collect from the tenant. I find that the landlord lost rental income for the month of May 2021 pursuant to the following calculation:

\$1,300.00 (rent the landlord would have collected under the tenancy agreement with the tenant) - \$700.00 (rent received by the landlord under the new tenancy agreement) = \$600.00.

Had the tenant not breached the tenancy agreement, the landlord would have earned \$600.00 more for the month of May 2021 than he did. The landlord's loss of rental income for May 2021 is \$600.00.

The landlord signed a lease with the new tenants for \$1,400.00 per month. Pursuant to Policy Guideline #3, in a fixed term tenancy, if a landlord is successful in re-renting the premises for a higher rent and as a result receives more rent over the remaining term than would otherwise have been received, the increased amount of rent is set off against any other amounts owing to the landlord for unpaid rent.

I find that the landlord earned \$100.00 more per month for the months of June and July 2021 than he would have under the tenancy agreement with the tenant. I find that the increased amount of rent in the amount of \$200.00 in total must be set off against the \$600.00 loss incurred for the month of May 2021. Therefore, the total loss of rental income suffered by the landlord is \$400.00.

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the landlord's undisputed testimony and the video of the subject rental property entered into evidence, I find that the tenant breached section 37(1)(a) of the *Act*, by leaving the subject rental property dirty. I accept the landlord's undisputed testimony that it took him and his wife four hours to clean the subject rental property. I find a rate of \$25.00 per hour to be reasonable. I find that the landlord is entitled to recover \$200.00 for cleaning from the tenant.

Section 38(1) of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
  - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
  - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(a) and 38(1)(b) of the *Act*.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$600.00.

### Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
May 2021 loss of rental income	\$400.00
Cleaning fee	\$200.00
Filing Fee	\$100.00
Less security deposit	-\$600.00
<b>TOTAL</b>	<b>\$100.00</b>

The landlord is provided with this Order in the above terms and 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.

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 04, 2021

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Residential Tenancy Branch