



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### **Introduction**

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

- a monetary order for compensation for unpaid rent, money owed, or monetary loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenants confirmed receipt of the landlord's application ('Application'). In accordance with section 89 of the *Act*, I find that the tenant duly served with the Application. All parties confirmed receipt of each other's evidentiary materials, and the hearing proceeded.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation as requested for losses or money owed?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or

arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on September 1, 2020, and was to end on August 31, 2021. Monthly rent was set at \$1,895.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$947.50, which the landlords still holds. The tenant moved out on April 1, 2021.

The tenant testified that they had given notice to end the tenancy before the end of the fixed term as the landlord failed to resolve issues regarding the heat despite the tenant's requests. The tenant testified that they had given the landlord ample time to resolve the issue, and as the suite was very cold in the fall, and as the tenant did not have the ability to control the heat, the tenant felt that the landlord had breached a material term of the tenancy agreement. The tenant states that on April 1, 2021 the tenancy became frustrated, and the contractual obligations had ended. The landlord is seeking the loss of rental income for April 2021 as the tenant did not pay rent for that month, and ended the fixed-term tenancy early. The landlord does not agree that the tenancy was frustrated, nor does the landlord agree that there are issues with the heating in the home.

In addition to the loss of April 2021 rental income, the landlord is seeking a monetary order for the following losses as set out in the landlord's monetary order worksheet below. The landlord's monetary claim was clarified with the landlord in the hearing as the claims listed on the landlord's original application did not coincide with the claims on the monetary order worksheet below. The landlord confirmed that they wished to proceed with the monetary claim as set out below, and accordingly, these are the claims that will be considered for the landlord's application.

<b>Item</b>	<b>Amount</b>
Repair & Install Closet Doors	\$50.00
Reposition suite furniture to original place	50.00
Move out clean	250.00
Repair walls back bedroom, and kitchen, 2 coats of paint, touch up in living room	350.00
Cutting of 6 keys not returned	30.00
Loss of Rent- April 2021	1,895.00
Unpaid Utilities	132.00
Filing Fee	100.00
<b>Total Monetary Order Requested</b>	<b>\$2,857.00</b>

In addition to the loss of rental income for April 2021, the landlord is seeking a monetary order for the unpaid utilities in the amount of \$132.00.

The landlord testified that the tenant failed to return the keys, costing the landlord \$30.00 to cut new ones. The landlord is also seeking a monetary order for the tenant's failure to leave the home in reasonably clean condition. The landlord submitted an invoice for services used to clean the rental unit in the amount of \$250.00, the move-in and move-out inspection report, as well as photos of the rental unit.

The landlord is also seeking a monetary order in the amount of \$50.00 for moving the furniture. The landlord testified that the tenant had moved the furniture in the furnished suite by piling up the furniture against the wall, which hid damage caused by the tenant. The landlord testified that the home was built in 1957, but we kept well, and was painted recently. The landlord testified that the tenant had damaged the walls, and is seeking the recovery of the losses associated with repairing and repainting the walls.

The landlord testified that they had attended the suite on March 29, 2021, and observed the broken window and closet door, and was informed by the tenant that they would have both items repaired, but did not.

The tenant disputes the claims made by the landlord in their application. The tenant called a witness in the hearing, MS, who testified that she had helped the tenant unclutter the rental unit and discard clutter that was left behind in the rental unit before the tenant had moved in. The landlord testified that the rental unit was not clean, and that the rental unit lacked storage due to the amount of furniture in the rental unit. MS testified that the damage was already there, which included scratches to the paint on the walls.

The tenant's advocate further added that several parties were involved in cleaning the rental unit. The landlord confirmed in the hearing that the tenant was provided a \$100.00 credit for move-in cleaning, but that was because everyone's cleaning standards were different.

The tenant does not dispute moving the furniture, but disputes the reasonableness of a charge to move the furniture back to its original location.

The tenant disputes the charge for the broken window as the tenant argues that the window was broken by an uninvited third party, and not a guest of the tenant's. The tenant submits that an intoxicated man had broken the window, and the tenant should not be responsible for this person's actions.

## **Analysis**

Section 44 of the *Residential Tenancy Act* reads in part as follows:

**44** (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

*(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;*

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

**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.*

While the tenant did notify the landlord of the early termination of this tenancy, they did not end it in a manner that complies with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenant in regards to this tenancy before they had moved out. The tenant moved out earlier than the date specified in the tenancy agreement, citing a frustrated tenancy.

**Residential Tenancy Policy Guideline 34** states the following about a Frustrated Tenancy:

*A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now*

*impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.*

*The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms.*

*A contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into. A party cannot argue that a contract has been frustrated if the frustration is the result of their own deliberate or negligent act or omission.*

*The Frustrated Contract Act deals with the results of a frustrated contract. For example, in the case of a manufactured home site tenancy where rent is due in advance on the first day of each month, if the tenancy were frustrated by destruction of the manufactured home pad by a flood on the 15<sup>th</sup> day of the month, under the Frustrated Contracts Act, the landlord would be entitled to retain the rent paid up to the date the contract was frustrated but the tenant would be entitled to restitution or the return of the rent paid for the period after it was frustrated.*

In consideration of the evidence and testimony before me, I am not satisfied that this tenancy meets the definition of a Frustrated Tenancy as clarified by RTB Policy Guideline 34. Despite the fact that the tenant felt that they could not continue living under the conditions at the time due to the issues with the heat, I am not satisfied that this could be considered an “unforeseeable event”, nor am I satisfied that the circumstances had been so radically changed by an event that the fulfillment of the contract was impossible. I find that the rental unit was still inhabitable, and the tenancy does not qualify as a Frustrated Tenancy.

The evidence is clear that the tenant did not comply with the Act in ending this fixed term tenancy, and I find the landlord is entitled to a monetary order for the loss of the rent for April 2021.

I also find that the tenant is responsible for the utilities that remain unpaid. I find the landlord had provided sufficient evidence to show that the tenant owes \$132.00 for their portion of the utilities, and I allow this portion of the landlord’s monetary claim.

I also accept the landlord's testimony and evidence that the tenant failed to return the keys, and as a result the landlord suffered a monetary loss of \$30.00 to replace these keys. Accordingly, I allow this portion of the landlord's monetary claim.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the landlord must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

***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.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claims on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlords must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 37(2)(a) of the *Act* stipulates 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.

The landlord is seeking a monetary order for the repairs and reinstallation of the closet door. As noted above, the burden of proof is on the claimant to support their losses. In this case I am not satisfied that the landlord had provided sufficient evidence to demonstrate that the closet doors were damaged by the tenant. Furthermore, although the closet door may have been removed, the landlord has a duty to mitigate their losses. I am not satisfied that landlord had demonstrated that a professional had to re-install the closet doors. I find that this was an expense the landlord had decided to incur, and not necessarily due to the tenant's actions. Accordingly, I dismiss this portion of the landlord's claims.

The landlord also made a claim for painting and repairs of the walls, which the tenant disputes having damaged. Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. As per this policy, the useful life of interior paint is four years. The landlord's testimony was that the suite was re-painted at regular intervals, and that the tenant had caused damage to the paint. The tenant provided contrasting testimony, stating that there was pre-existing damage to the walls. In light of the evidence before me, I find that the landlord has not provided sufficient evidence to show that the tenant had caused the damage to the extent that it exceeds regular wear and tear. Accordingly, I dismiss the landlord's claims in relation to the wall repairs and painting.

In relation to the cleaning, although I find that the testimony does support that the rental unit may not have been properly cleaned at the beginning of this tenancy, this fact does not relieve the tenant's obligations to return the rental unit to the landlord in reasonably clean condition. I accept the landlord's testimony that the tenant was given a credit for the cleaning at the beginning of the tenancy as well. Despite the tenant's claims that they had thoroughly cleaned the rental unit before the end of the tenancy, I am satisfied that the landlord had provided sufficient evidence to support that the tenant did not return the rental unit in reasonably clean condition, as required by the *Act*. Accordingly, I allow the landlord's claim for cleaning.

Lastly, the landlord is seeking compensation for having to reposition the furniture. Although I find it undisputed that the tenant did move the furniture, which the tenant states was to make more room in the rental unit, I do not find that this expense was a necessary one. As stated earlier, the landlord has a duty to mitigate their losses, which I do not find the landlord did in these circumstances. I am not satisfied that the landlord had provided sufficient evidence to support why this expense was a necessary one, and accordingly, I dismiss this portion of the landlord's claim without leave to reapply.

I note that the landlord had referenced other losses in their initial application that was not reflected on their monetary order worksheet such as the broken window and microwave. As noted earlier, the landlord had clarified in the hearing that they wished to rely on the claims listed on the monetary order worksheet. I note that as a matter of natural justice and fairness, the respondent must know the case against them. In this case I find that the landlord was unclear as to these additional claims that were not included on the monetary order worksheet. Accordingly, I decline to make any further findings on these items that were omitted.

As the landlord was partially successful with their claim, I allow the landlord to recover half of the filing fee for their application.

The landlord continues to hold the tenant's security deposit of \$947.50. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's deposit in partial satisfaction of the monetary claim.

### **Conclusion**

I issue a \$1,409.50 Monetary Order in favour of the landlord as set out in the table below.

<b>Item</b>	<b>Amount</b>
Move out clean	\$250.00
Cutting of 6 keys not returned	30.00
Loss of Rent- April 2021	1,895.00
Unpaid Utilities	132.00
Filing Fee	50.00
Less security deposit held	-947.50
<b>Total Monetary Order</b>	<b>\$1,409.50</b>

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.

The remainder of the application is dismissed without leave to reapply.

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 16, 2021