



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDL, FFL; MNDCT, FFT

### Introduction

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

- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for her application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- a monetary order for compensation under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for her application, pursuant to section 72.

The landlord and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 54 minutes.

The tenant intended to call a witness, who was excluded from the outset of this hearing. The tenant did not recall this witness to testify later during this hearing.

The hearing began at 1:30 p.m. with me and the tenant present. When I checked the line, asking if the landlord was present, she did not respond. The landlord called into the hearing at 1:32 p.m., stating that she disconnected from the hearing. I did not discuss any evidence with the tenant in the absence of the landlord.

The landlord confirmed that she was the previous owner of the rental unit, as she sold the house.

At the outset of this hearing, I informed both parties that they were not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”). The landlord and tenant both separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, as well as the possible consequences and outcomes, to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with this hearing, they wanted me to make a decision, and they did not want to settle both applications.

Both parties confirmed receipt of the other party’s application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party’s application.

#### Preliminary Issue – Inappropriate Behaviour by the Landlord during this Hearing

Rule 6.10 of the RTB *Rules* states the following:

*6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing*  
*Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator’s direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

Throughout this hearing, the landlord was angry, upset and argumentative. The landlord repeatedly yelled at me and interrupted me, while I was speaking. The landlord also interrupted the tenant while she was speaking. The landlord became angry and upset when I asked her questions about her application.

The landlord repeatedly argued with me and interrupted me throughout this hearing. When I informed the landlord that I could not engage in arguments with her, she continued with her inappropriate behaviour. At the end of this hearing, the landlord asked for my name again, after I already provided it twice at the beginning of this hearing. She said that I was “speaking too fast” so she did not hear me. I repeated my

name for the landlord a third time. When I asked if the landlord missed any other information that I explained during this hearing, she laughed and said: “well if I knew that then I wouldn’t have missed it.”

I repeatedly cautioned the landlord, but she continued with this inappropriate behaviour. However, I allowed the landlord to attend the full hearing, despite her inappropriate behaviour, in order to allow her to present her application and respond to the tenant’s submissions. This hearing lasted 54 minutes because of the landlord’s repeated arguments and inappropriate behaviour.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damage to the rental unit?

Is the landlord entitled to retain the tenant’s deposits?

Is the tenant entitled to a monetary order for compensation under the *Act, Regulation* or tenancy agreement?

Is either party entitled to recover the filing fee for their application?

### Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on April 27, 2019 and ended on April 23, 2021. Monthly rent in the amount of \$1,800.00 was payable on the first day of each month. A security deposit of \$900.00 and a pet damage deposit of \$900.00 were paid by the tenant and the landlord continues to retain both deposits in full. A written tenancy agreement was signed by both parties. A move-in condition inspection report was completed by both parties. A move-out condition inspection report was completed by the landlord only, without the tenant present. The landlord did not have written permission to retain any amount from the tenant’s deposits. The landlord’s application to retain the tenant’s deposits was filed on May 4, 2021. The

tenant provided a written forwarding address to the landlord on April 29, 2021 by email, which was received by the landlord.

The tenant stated that she provided a written forwarding address to the landlord again on May 7, 2021, to ensure that the landlord had it. The landlord said that she could not find this email and was not sure if she had it.

As per her online application details, the landlord seeks a monetary order of \$1,000.00 for unpaid rent, damages of \$1,815.00, to retain the tenant's deposits totalling \$1,800.00, and the \$100.00 filing fee. The tenant disputes the landlord's application.

The tenant seeks the return of her deposits, totalling \$1,800.00, plus the \$100.00 application filing fee. The tenant amended her application to add claims for lost wages of \$528.00 and photocopies of \$2.50, related to preparing for this hearing. The landlord disputes the tenant's application.

The landlord testified regarding the following facts. She is seeking "half a month's rent, the filing fee, and the security deposit for damages not cleaned up or repaired." She sent an RTB form to the tenant to complete a move-out inspection.

The tenant testified regarding the following facts. In April 2021, the tenant paid \$900.00, which is half a month's rent, to the landlord. The landlord accepted it and did not ask for the remainder of half month's rent. The tenant told the landlord that she bought a home and she took possession on April 16, 2021, as it was a quick possession date. The tenant does not agree to \$1800.00 of damages in the rental unit, as claimed by the landlord in her application. The tenant did not damage the landlord's home, particularly as the tenant was trying to buy it after two years, but the landlord rejected her offer to buy it. The tenant bought another property and moved into it. The tenant did not leave the rental unit abandoned. The landlord's home went on the market and she sold it. The landlord did not lose any income and she sold the rental unit above asking price, while the tenant was still living there. The tenant was a "model tenant," did landscaping, fixed things, and agreed to the replacement of a used stove, to save the landlord money. The landlord did a walkthrough without the tenant present and the tenant does not agree with the landlord's claim for damages. The top material of the landlord's gazebo was ruined in a storm and the landlord just kept it there. The gazebo was tattered and torn when the tenant moved in.

The tenant stated the following facts. The weather strip at the bottom of the door was damaged in the year 2000. The screw holes from the television mount does not cost

\$500.00 to fix, as claimed by the landlord in her application. The landlord refused the tenant's virtual walkthrough of the rental unit with the realtor. The landlord's realtor said that the tenant was a "model tenant" and gave her a \$150.00 gift certificate. The tenant had the carpet cleaned on the 23rd. The landlord told the tenant that she would return the tenant's deposits. The tenant did not occupy the landlord's home after April 16, 2021 and the tenant gave the keys for the rental unit to the landlord's realtor's office on April 23, 2021. The landlord told the tenant that she would come on April 16, 2021, to inspect the rental unit while the tenant was moving but she did not show up. The tenant's pet did not cause any damages to the rental unit. The battery replacement does not cost \$200.00, as claimed by the landlord in her application. The new owners took possession of the rental unit on May 13, 2021, after they purchased it. The landlord attempted to do a move out inspection on May 3, 2021, the tenant sent her mortgage broker there on her behalf to do it, but the landlord was not there.

### Analysis

#### Landlord's Application

#### Applicant's Burden of Proof and Presenting Claims

At the outset of this hearing, I repeatedly informed both parties that the applicants in each application had the burden of proof to present their claims on a balance of probabilities. Both parties affirmed their understanding of same and did not have any questions.

At the outset of this hearing, the landlord claimed that she could not find her application and she had "papers everywhere" because she just moved to another place. I provided the landlord with additional time throughout this hearing to find her paperwork and look through it. When I asked the landlord to present her application, she simply claimed that she was seeking "half a month's rent, the filing fee, and the security deposit for damages not cleaned up or repaired." She spent approximately two minutes explaining her entire application. The tenant spent more time disputing the landlord's claims in detail with amounts and evidence regarding same, than the landlord did presenting her own application.

At the end of this hearing, I notified the landlord that she did not present her application, go through her documents or monetary order worksheet. The landlord became very upset, interrupted me, yelled at me, and argued with me. The landlord claimed that she had all of her evidence in front of her and that if I had all her evidence then I could go

through it myself, since she did not know she had to present it. I repeatedly asked the landlord to present her application, I asked her questions about her claims, and I asked her about her documents. I informed her that she provided quotes and estimates but asked if she had receipts for repairs and work completed. She said that she did not complete all of the repairs in the rental unit because she sold the property to new owners. She stated that she was told by someone at the RTB that she could claim for damages that she never repaired or paid for. She claimed that she did some work with her husband and when I asked her what, she did not respond. She explained that she time and date-stamped each photograph that she submitted, then stated that she did not, then claimed that she could not upload everything to the online RTB website. I notified the landlord that she submitted a voluminous number of documents, including many photographs, but they were not date or time-stamped as she claimed.

### Credibility

I found the tenant to be a more credible witness, as compared to the landlord. The landlord provided her evidence in an upset, angry, agitated, argumentative, inconsistent, and confusing manner. She interrupted the tenant and I, while we were speaking. When I asked the landlord questions about her application or for details regarding her claims, she argued and yelled at me, rather than answering my questions.

Conversely, I found that the tenant provided her evidence in a calm, candid, forthright, and consistent manner. The tenant did not argue with or interrupt the landlord while she was speaking. The tenant answered questions candidly and agreed when facts were unfavourable to her claim.

### Rules and Legislation

The following Residential Tenancy Branch (“RTB”) *Rules* are applicable and state the following, in part:

#### *7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party’s agent...*

...

#### *7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim.*

*The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Findings

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's entire application of \$2,915.00, without leave to reapply.

I find that the landlord did not properly present her evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*.

This hearing lasted 54 minutes so the landlord had ample opportunity to present her application and respond to the tenant's claims. During the hearing, I repeatedly asked the landlord if she had any other information to present and gave her multiple opportunities for same. The landlord was more focussed more on arguing with me and interrupting me than presenting her own application.

The landlord did not provide any amounts or explain any of her claims in detail during this hearing. The landlord did not review her documents in any detail during this hearing. I find that the landlord failed the above four-part test.

The landlord testified that she did not complete all repairs for damages because she sold the rental property. However, the landlord still claimed for these amounts, which I find she is not entitled to claim. I find that the landlord provided mainly online

photographs, estimates, and quotes, rather than receipts or documents to show that she actually paid for and completed repairs to damages in the rental unit. I find that the landlord failed to prove damages beyond reasonable wear and tear, caused by the tenant, as required by Residential Tenancy Policy Guideline 1.

The landlord did not lose rent because she sold the property to new owners and no new tenants were found to rent the property. I accept the tenant's testimony that the landlord accepted the tenant's half month rent of \$900.00 for full April 2021 rent. I accept the tenant's testimony that she did not live at the rental unit after April 16 and she returned the keys to the landlord on April 23. The landlord claimed for a higher amount of \$1,000.00 for the remaining half month of rent, rather than \$900.00, with no explanation. The landlord did not indicate any amount for a loss of rent during this hearing.

Accordingly, as per her online application, the landlord's claim for unpaid rent of \$1,000.00, damages of \$1,815.00, and to retain the tenant's deposits totalling \$1,800.00, is dismissed without leave to reapply.

As the landlord was unsuccessful in her application, I find that she is not entitled to recover the \$100.00 filing fee from the tenant.

### *Tenant's Application*

During this hearing, I notified the tenant that she was not entitled to lost wages of \$528.00 and photocopies of \$2.50, both related to preparation for this hearing. The tenant confirmed her understanding of same. The only hearing-related fees recoverable under section 72 of the *Act* is for filing fees.

Section 38 of the *Act* requires the landlord to either return the tenant's deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposits. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).



I make the following findings on a balance of probabilities and based on the testimony of both parties. This tenancy ended on April 23, 2021. The landlord did not have written permission to retain any amount from the tenant's security deposit. The tenant provided a forwarding address by email to the landlord on April 29, 2021 and again on May 7, 2021. Email is permitted by section 88 of the *Act* and section 43 of the *Regulation*. The landlord confirmed receipt of the tenant's forwarding address and indicated this same address in her own application against the tenant.

I find that the tenant did not extinguish her right to the return of her deposits because she was not present when the landlord completed a move-out condition inspection report, as per section 36 of the *Act*. I find that the landlord failed to point me to documentary evidence of an RTB form and when this form was served to the tenant, for a final opportunity to complete a move-out inspection. The landlord was given an opportunity to find this form and the title of the document to provide a reference to me during this hearing but was unable to do so. I find that the tenant was ready to complete a move-out inspection, but the landlord did not attend on May 3, 2021. I find that the landlord did not provide specific details of the move-out inspection that she conducted in the tenant's absence, during this hearing.

The landlord's right to claim against the tenant's security deposit for damages was extinguished for failure to complete a move-out condition inspection and report with the tenant and provide two opportunities with one using the approved RTB form, as per section 36 of the *Act* and section 17 of the *Regulation*. However, the landlord applied for other claims aside from damages.

The landlord continues to hold the tenant's security deposit of \$900.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to the regular return of her security deposit of \$900.00 from the landlord.

A pet damage deposit can only be used for damage caused by a pet to the residential property. Section 38(7) of the *Act* states that unless a tenant agrees otherwise, a landlord is only entitled to use a pet damage deposit for pet damage.

When I asked the landlord what she retained the tenant's pet damage deposit for, she said for damage to "weatherstripping." When I asked her where this claim was contained on her monetary order worksheet and how much the claim was for, she said that she did not know. She then stated that she did not claim for it and she kept the pet damage deposit because that is what she was told to do by other people.

The landlord continues to hold the tenant's pet damage deposit of \$900.00. No interest is payable on this deposit during the period of this tenancy. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive double the value of her pet damage deposit of \$900.00, totalling \$1,800.00. Although the tenant did not apply for double the value of her pet damage deposit back, I am required to consider it since the tenant did not specifically waive her right to it, as per Residential Tenancy Policy Guideline 17.

As the tenant was partially successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

The landlord's entire application is dismissed without leave to reapply. The tenant's application for \$530.50 for lost wages and photocopies, is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$2,800.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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 02, 2021

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Residential Tenancy Branch