



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDCL-S FFL

### **Introduction**

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit in the amount of \$562.44 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:59 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. 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 testified she served the tenant with the notice of dispute resolution form and supporting evidence package via registered mail on May 13, 2021. She provided a Canada Post tracking number confirming this mailing. I find that the tenant was deemed served with this package on May 18, 2021, five days after the landlord mailed it, in accordance with sections 88, 89, and 90 of the Act.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) a monetary order for \$562.44;
- 2) recover the filing fee; and
- 3) retain the security deposit in satisfaction of the monetary order made?

### **Background and Evidence**

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

The parties entered into a written, month to month tenancy agreement starting December 1, 2020. Monthly rent was \$1,150 and was payable on the first of each month. The tenant paid the landlord a security deposit of \$575. The parties conducted a move in condition inspection report at the start of the tenancy. The landlord returned \$12.57 of the security deposit to the tenant by registered mail (sent to the forwarding address he provided her at the end of the tenancy) on May 13, 2021.

On March 20, 2021, the tenant gave the landlord notice he would be ending the tenancy on April 30, 2021. He vacated the rental unit in mid-April 2021. On April 29, 2021, the landlord and the tenant's girlfriend (to whom the tenant gave written authorization to conduct the move out condition inspection on his behalf the day prior) attended the rental unit to complete a move out condition inspection report (the **"Move Out Report"**). The tenant's girlfriend wrote the tenant's forwarding address on the bottom of the Move Out Report. The landlord served the tenant with a copy of the Move Out Report by registered mail on May 13, 2021.

On the Move Out Report, the landlord wrote:

Suite needs to be totally cleaned including appliances. Odor from ongoing essence oil use in walls and ceiling. Also wall marks. Bed cover - bug proof is dirty. Needs cleaned or replaced. Replace dirty stove top, element trays.

On the Move Out Report, the tenant's girlfriend indicated that she agreed that it fairly represented the condition of the rental unit. The tenant's girlfriend indicated that she did not agree to any deduction to the security deposit. The landlord wrote "pending call from cleaning company" above where the tenant's girlfriend could have indicated that she agreed to such deductions.

The landlord applied to retain the security deposit on May 12, 2021.

The landlord testified that she hired cleaners to clean the rental unit. They charged her \$220 (2 cleaners for 5 hours at \$22 per hour). She submitted an invoice confirming this amount.

The landlord testified that during the tenancy the tenant diffused mint oil in the rental unit roughly four days a week. This was a point of contention between the parties. The landlord (who lived in upstairs) sent numerous messages asking him to stop using mint oil in the rental unit because it was causing her health problems.

The landlord testified that the smell lingered in the rental unit after the tenancy ended and seeped into the walls and ceiling. She testified that she spoke with a remediation

company, who advised her to try using a “hydroxyl machine” to remove the odor from the walls. They advised her that, if this did not work, she would need to seal and repaint the walls to eliminate the smell. The landlord rented such a machine, at a cost of \$152.89. She submitted a receipt for this amount. She testified that it did not eliminate the odor, and that she needed to seal and repaint the walls of the rental unit. However, she is not seeking to recover the cost of repainting in this application.

Finally, the landlord testified that the tenant soiled a mattress cover that she provided him at the start of the tenancy. She testified that she tried to launder it, but the stains would not come out. She speculated that they were blood stains. She submitted a photo of the mattress cover into evidence confirming it was stained, although I cannot say what has caused the stains. The landlord purchased a new mattress cover to replace this soiled one. She submitted a receipt for \$89.59 confirming this purchase.

### **Analysis**

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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. In order 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.

Section 37(2) of the Act states:

#### **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,

Based on the landlord’s remarks on the Move Out Report, which the tenant’s girlfriend, in her capacity as his authorized agent, signed, I accept that the rental unit required cleaning, that the walls and ceiling smelled of mint, and that the mattress cover was stained. I do not find that any of these things represents reasonable wear and tear. Additionally, as the tenant’s girlfriend agreed that the rental unit required cleaning, I do

not find that the rental unit was left “reasonably clean”. Accordingly, I find that the tenant breached section 37(2) of the Act.

Based on the receipts provided, I find that the tenant incurred \$462.48 as a result of this breach, representing the following:

| Description             | Amount          |
|-------------------------|-----------------|
| Cleaning                | \$220.00        |
| Mattress Cover          | \$89.59         |
| Hydroxyl Machine Rental | \$152.89        |
| <b>Total</b>            | <b>\$462.48</b> |

I find that the landlord acted reasonably to minimize her loss. The cost of cleaning the rental unit is reasonable. The landlord attempted to launder the mattress cover before purchasing a new one (the cost of which is reasonable). It was reasonable to follow the remediation company’s advice and use a hydroxyl machine to try to eliminate the odor in the rental unit, before resorting to the more costly option of sealing and repainting the walls.

As such, I find that the landlord is entitled to recover the full amount that she is seeking.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, she may recover their filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain the balance of the security deposit in partial satisfaction of the monetary order made above.

### **Conclusion**

I grant the landlord’s application, in its entirety.

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$0.05, representing the following:

| Description             | Amount        |
|-------------------------|---------------|
| Cleaning                | \$220.00      |
| Mattress Cover          | \$89.59       |
| Hydroxyl Machine Rental | \$152.89      |
| Filing Fee              | \$100.00      |
| Security Deposit Credit | -\$562.43     |
| <b>Total</b>            | <b>\$0.05</b> |

The landlord must serve a copy of this decision and attached monetary order as soon as reasonably possible after receiving it from the Residential Tenancy Branch.

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

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Residential Tenancy Branch