



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing dealt with the adjourned Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “Act”) for a monetary order for damages, 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.

The Tenant and an Agent for the Landlord (the “Landlord”) attended the conference call hearing and were each reminded that the affirmation they provided on November 9, 2021, carried forward to today's proceedings. Both parties were 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 damage?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to recover the filing fee for this application?

### Preliminary Matter – Landlord’s Agent Unprepared

During these proceedings, Landlord’s Agent provided general statements regarding the history of this tenancy and the details of this claim. The Landlord’s Agent was prompted five times to provide accurate and concise testimony regarding the events in this tenancy that led to this application.

The Landlord's Agent was provided with additional time to arrange their notes and their testimony during these proceedings. However, the Landlord's Agent remained unable or unwilling to accurately testify to details of events or to present their documentary evidence to this Arbitrator.

The Landlord's Agent was reminded twice of sections 3.7 and 7.4 of the Rules of Procedure, which requires that all evidence must be organized, presented, and easily referenced during a hearing. However, even though there were 151 documents submitted in the Landlord's evidence package, the Landlord's Agent was only able to reference five of these documents during their verbal testimony.

Throughout these proceedings, the Landlord's Agent repeatedly demonstrated unfamiliarity with the *Residential Tenancy Act* and the Residential Tenancy Branches Rules of Procedure. The Landlord's Agent repeatedly asked this Arbitrator to provide them with personal guidance in how to present and prove their claim. Arbitrators are impartial decision-makers, and it is outside of an arbitrator's role to act as an advocate for either Applicant or Respondent during a legal proceeding. The Landlord's Agent was provided with general guidance on the Rules of Procedure and sections of the *Act* during these proceedings; however, the Landlord's Agent's requests for personal assistance in presenting their case was inappropriate and was refused by this Arbitrator.

Overall, I find that the Landlord's Agent was unprepared to present their case and showed a lack of understanding of the documents submitted into documentary evidence.

#### Preliminary Matter – Jurisdiction

The Landlord has applied to recover losses associated with a claimed break and enter that occurred in the rental unit on May 2, 2021.

In the Landlord's application, the Landlord indicated that this Tenancy ended on April 29, 2021. During these proceedings, the Tenant agreed that their tenancy ended on April 29, 2021.

I accept the agreed-upon testimony of these parties that this tenancy ended on April 29, 2021, three days before the date of the claimed break and enter of the rental unit.

As this incident occurred after the end date of this tenancy, I find that the claims related to this incident, consisting of \$630.00 for glass replacement, and \$285.00 to secure a broken window, fall outside of this tenancy and outside of the jurisdiction of the Residential Tenancy Branch.

For this reason, I decline jurisdiction to resolve the claims related to the May 2, 2021 incident. I have made no determination on the merits of the Applicants application in relation to these claims. Nothing in my decision prevents either party from advancing their claims before a Court of competent jurisdiction.

### 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 this tenancy began on January 1, ~~2019~~ 2020, as a one-year fixed term tenancy that rolled into a month-to-month tenancy at the end of the initial fixed term. Rent in the amount of \$1,750.00 was to be paid by the ~~last~~ first day of each month, and the Landlord had been given an \$875.00 security deposit at the outset of the tenancy. The Landlord submitted a copy of the tenancy agreement and move-in inspection report into documentary evidence.

The Tenant testified that on April 29, 2021, when they attended the rental unit to collect the remainder of their possessions and complete the cleaning of the rental unit, they discovered that the Landlord had changed the locks and that they could no longer access the rental unit. The Tenant testified that they had paid the rent until the end of April 2021 and had not indicated to the Landlord that they would be surrendering possession of the rental unit early.

The Landlord testified that they could not say if the Tenant had been locked out or not as it was the ex-property manager who had completed the end of this tenancy.

The Tenant testified that they had not been contacted by the Landlord to arrange a move-out inspection and that they had not been permitted on the property after April 29, 2021. The Tenant testified that they had been speaking to the property manager regarding a move-out inspection, but this conversation ended on April 29, 2021, when the property manager advised the Tenant that they would need to speak to the Landlord

as they were no longer the property manager for the rental unit. The Tenant submitted six pages of text massaged between themselves and the property manager into documentary evidence.

The Landlord testified that there had been a move-out inspection scheduled for April 30, 2021, but that Tenant did not attend, so the move-out inspection had been completed without the Tenant. The Landlord was asked if an attempt had been made to re-schedule the move-out inspection that was missed on April 30, 2021, or if a final attempt to schedule the inspection had been made in writing on the required form. The Landlord testified they could not say if that had been done for this tenancy. The Landlord submitted a copy of the move-in/move-out inspection report (the "Inspection Report") dated April 30, 2021, and 127 pictures into documentary evidence.

The Landlord testified that they are claiming \$4725.00 in wall repair and re-painting as well as \$255.00 to repair broken kitchen cabinets at the end of the tenancy. The Landlord testified that the Tenant returned the rental unit to them with marked walls, holes in walls, paint stains on the walls, and damaged cabinets. The Landlord testified that there were several pictures of the rental unit in evidence, which depicted the condition of the walls and the cabinets at the end of tenancy. When asked, the Landlord was unable to indicate which of the 127 pictures in evidence were related to this portion of their claim. The Landlord submitted two receipts for repair work into documentary evidence.

The Tenant testified that as they were locked out of the rental unit for the last two days of the tenancy, they were unable to finish cleaning the walls or complete repairs. The Tenant also testified that much of the damage the Landlord was claiming for was present at the beginning of this tenancy, as indicated on the move-in inspection report.

The Landlord testified that they are claiming for \$1,106.10 the removal and disposal of the Tenant's personal belongings left in the rental unit at the end of the tenancy. The Landlord testified that the Tenant returned the rental unit to them with several large pieces of furniture and garbage in the rental unit, the garage, and the storage area. The Landlord again testified that there were several pictures in evidence of the rental unit taken at the end of tenancy which depicted the items left in the rental unit. When asked, the Landlord was again unable to indicate which of the 127 pictures in evidence were related to this portion of their claim. The Landlord submitted one receipt for hauling and disposal into documentary evidence.

The Tenant testified that as they were locked out of the rental unit for the last two days of the tenancy, that due to this they were unable to finish moving all of their possession out of the rental unit at the end of their tenancy. The Tenant also testified that several of the items the Landlord is attempting to charge to them are items owned by the Landlord and the other renters who live upstairs.

The Landlord testified that they are claiming for \$294.00 in cleaning costs at the end of the tenancy. The Landlord testified that the Tenant returned the rental unit to them uncleaned at the end of tenancy. The Landlord again testified that there were several pictures in evidence of the rental unit which depicted how dirty the rental unit was at the end of the tenancy. The Landlord remained unable to indicate which of the 127 pictures in evidence were related to this portion of their claim. The Landlord submitted one receipt for cleaning into documentary evidence.

The Tenant testified that as they were locked out of the rental unit for the last two days of the tenancy, they were unable to complete the required cleaning at the end of their tenancy.

The Landlord testified that they are claiming for \$157.57 lock replacement at the end of the tenancy. The Landlord testified that the Tenant did not return the keys at the end of this tenancy. The Landlord submitted one receipt for lock replacement into documentary evidence.

The Tenant again testified that as they were locked out of the rental unit for the last two days of the tenancy and not invited to the move-out inspection, so they were unable to return to keys. Additionally, the Tenant testified that their ex-husband, the other tenant listed on the Landlord's claim, has the old keys to the rental unit.

### Analysis

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

I find that these parties initially entered into a fixed term tenancy agreement that rolled into a month-to-month tenancy as of January 1, 2020, and that this tenancy ended on April 29, 2021.

I accept the agreed-upon testimony of these parties that the Tenant was not in attendance for the move-out inspection for this tenancy that was conducted by the Landlord on April 30, 2021. Section 35 of the Act places the responsibility on the Landlord to ensure that the move-out inspection is scheduled and conducted in accordance with the Act, stating the following:

***Condition inspection: end of tenancy***

- 35** (1) *The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*
- (a) on or after the day the tenant ceases to occupy the rental unit,*  
*or*  
*(b) on another mutually agreed day.*
- (2) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*
- (3) *The landlord must complete a condition inspection report in accordance with the regulations.*
- (4) *Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*
- (5) *The landlord may make the inspection and complete and sign the report without the tenant if*
- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or*
  - (b) the tenant has abandoned the rental unit.*

Pursuant to section 35(2), a landlord is required to offer at least two opportunities to a tenant to schedule the inspection; section 17 of the *Residential Tenancy Regulations* (the “*Regulations*”) provided further clarity on the requirement of these two opportunities, stating the following:

***Two opportunities for inspection***

- 17** (1) *A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.*
- (2) *If the tenant is not available at a time offered under subsection (1),*
- (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and*

*(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.*

*(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.*

I accept the testimony of the Tenant supported by the test messages they submitted into documentary evidence that they were initially provided with an opportunity to conduct the move-out inspection with the Landlord's Property Manager but that this arranged inspection was cancelled when they were notified by the Property Manager that they were no longer the Agent for the Landlord.

Additionally, I accept the testimony of the Tenant that the Landlord did not provide a second opportunity to schedule the move-out inspection, nor had they been served with a final notice to conduct the inspection from the Landlord on the approved Residential Tenancy Branch's form. Accordingly, I find that the Landlord breached section 35(2) of the *Act* by not offering the Tenant the second opportunity to schedule the move-out inspection in accordance with the *Act* and *Regulations*.

Section 36(2) of the *Act* set out the consequences for a landlord when the requirement to offer two attempts to schedule the inspection, in accordance with the *Act*, are not met, stating the following:

***Consequences for tenant and landlord if report requirements not met***

**36 (2)** *Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

*(a) does not comply with section 35 (2) [2 opportunities for inspection],*

*(b) having complied with section 35 (2), does not participate on either occasion, or*

*(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

Consequently, I find that the Landlord extinguished their right to make a claim against the security deposit for this tenancy and that the security deposit should have been returned to the Tenant within 15 days from the later of the day the tenancy ended or the date the Landlord had received the Tenant's forwarding address in writing.

In this case, I find that this tenancy ended on April 29, 2021, the agreed-upon date between these parties that the Landlord took back possession of the rental unit. In addition, I accept the testimony of both these parties that the Landlord supported by the Inspection Report they submitted into documentary evidence that they were in receipt of the Tenant's forwarding address as of April 30, 2021. Accordingly, the Landlord had until May 15, 2021, to comply with section 38(1) of the *Act* by returning the security deposit in full to the Tenant, which the Landlord did not do.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return the deposit within the required 15 days, the landlord must pay the tenant double the security deposit.

***Return of security deposit and pet damage deposit***

- 38 (6) If a landlord does not comply with subsection (1), the landlord*
- (a) may not make a claim against the security deposit or any pet damage deposit, and*
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

Therefore, I find that pursuant to section 38(6) of the *Act*, the value of the security deposit for this tenancy has doubled, and is now valued at \$1,750.00, due to the Landlord's breach of section 35(2) of the *Act*.

As for the Inspection Report in evidence, an arbitrator would normally look to this inspection report as the official document that represents the condition of the rental unit at the beginning and the end of a tenancy, as it is required that this document is completed in the presence of both parties and is seen as a reliable account of the condition of the rental unit. As it has already been determined that the Tenant was not provided with the required opportunities to attend the move-out inspection, I find the inspection report I have before me to be an unreliable account of the condition of this rental unit at the end of tenancy, and I will not consider this document in my determination of this claim.



Additionally, as to how this tenancy ended, I accept the undisputed testimony of the Tenant that they had paid the full rent for April 2021 and had not surrendered the rental unit to the Landlord before the last day of this tenancy on April 30, 2021. I also accept the undisputed testimony of the Tenant that the Landlord or an Agent of the Landlord had locked the Tenant out of the rental unit as of April 29, 2021, two days before the legal end date of this tenancy. Section 31 of the *Act* states the following:

***Prohibitions on changes to locks and other access***

*31 (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.*

*(1.1) A landlord must not change locks or other means of access to a rental unit unless*

*(a) the tenant agrees to the change, and*

*(b) the landlord provides the tenant with new keys or other means of access to the rental unit.*

I find that the Landlord was in breach of section 31 of the *Act* when they locked the Tenant out of the rental unit on April 29, 2021.

As for the Landlord's claims for the recovery of \$6,537.67 in losses from this tenancy, consisting of \$4,725.00 in wall repair and painting, \$255.00 in kitchen cabinet repairs, \$157.57 in lock replacement, \$1,106.10 in hauling and the disposal of personal items, and \$294.00 in cleaning cost. The 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.

After reviewing all of the testimony and excepted documentary evidence submitted by the parties in this case, and I find that it was the Landlord who breached the *Act* at the end of this Tenancy and not the Tenant when the Landlord locked the Tenant out of the rental unit ~~three~~ two days before the end of this tenancy.

Additionally, I find that the Landlord did not act reasonably to minimize their possible damages or losses for this tenancy when they did not permit the Tenant access to the rental unit to complete their move and cleaning at the end of this tenancy.

Overall, I find that it was unreasonable of this Landlord to attempt to recover costs for clean, garage disposal and repairs to this rental unit when they acted to take this rental unit back from the Tenant two days early, without the Tenants consent, and before this Tenant had completed their move, their cleaning, and the repair of this unit at the end of this tenancy. Consequently, I dismiss the Landlord's claim for the recovery of their losses and costs 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 not been successful in their application, I find that they are not entitled to the recovery of their filing fee for this application.

I order the Landlord to return the doubled value of the security deposit that they are holding for this tenancy to the Tenants within 15 days of receiving this decision, in the amount of \$1,750.00

Additionally, I grant the Tenants a conditional monetary order in the amount of \$1,750.00 to be served on the Landlord in the event that they do not comply as ordered.

### Conclusion

I find that the Landlord breached sections 31 and 35 of the *Act* during this tenancy.

I dismiss the Landlord's monetary claim in its entirety.

I order the Landlord to return the doubled value of the security deposit in the amount of \$1,750.00 to the Tenants within 15 days of the date of this decision.

I grant the Tenants a conditional **Monetary Order** in the amount of **\$1,750.00** for the return of their security deposit. The Tenants are provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible, should they not comply as ordered. 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: December 10, 2021

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Residential Tenancy Branch

Correction Dated: January 4, 2022

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A)  
OF THE RESIDENTIAL TENANCY ACT ON **January 4, 2022**  
AT THE PLACES INDICATED **BY UNDERLINING OR USING STRIKETHROUGH.**