



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlords on June 15, 2021, under the *Residential Tenancy Act* (the Act), seeking:

- Compensation for damage cause by the Tenant, their pets, or their guests to the unit, site, or property;
- Compensation for monetary loss or other money owed;
- Recovery of unpaid rent and/or utilities;
- Recovery of the filing fee; and
- Authorization to withhold the security deposit towards any amounts owed.

The hearing was convened by telephone conference call and was attended by and agent for the Landlords (the Agent), G.S., who provided affirmed testimony. Neither the Tenant nor an agent for the Tenant attended. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Agent was advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Agent was asked to refrain from speaking over myself and any other participants, should they appear, and to hold their questions and responses until it was their opportunity to speak. The Agent was also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent must be served with a copy of the Application, the Notice of Hearing, and any documentary evidence intended to be relied upon by the applicant at the hearing. As neither the Tenant nor an agent for the Tenant attended the hearing, I confirmed service of these documents as explained below.

The Agent testified that on July 11, 2021, they used that forwarding address provided to them by the Tenant on the move-out condition inspection report on May 31, 2021, to send the Tenant the Notice of Dispute Resolution Proceeding Package, which contained a copy of the Application, the Notice of Hearing, and the documentary evidence before me on behalf of the Landlords. The Agent stated that it was sent by registered mail and provided me with the registered mail tracking number and a copy of the move-out condition inspection report showing the Tenant's forwarding address. Canada Post shows that the registered mail was sent as described above, that notice cards were left on July 14, 2021, and July 20, 2021, before the package was returned to sender. The Agent stated that they re-sent the package to the same address on December 20, 2021, and provided me with the registered mail tracking number. The Agent stated that they had wrapped it like a present, hoping the Tenant would accept delivery, but they did not. Canada post shows that the registered mail was sent on December 20, 2021, that a notice card was left on December 30, 2021, and that it has been available for pick-up since January 4, 2022.

Based on the above, I am satisfied that the Landlords sent the Notice of Dispute Resolution Proceeding Package and the documentary evidence before me to the Tenant on no less than 2 occasions, at the forwarding address provided by the Tenant on May 31, 2021, and that this address is a valid address for service under sections 88(d) and 89(1)(d) of the *Act*. As the Tenant did not pick-up the registered mail, I therefore deem these documents served on the Tenant on July 16, 2021, five days after they were first sent by registered mail, pursuant to section 90(a) of the *Act*. Residential Tenancy Branch (Branch) records show that the Notice of Dispute Resolution Proceeding Package was made available to the Landlords on July 8, 2021, and as I am satisfied that they were mailed to the Tenant on July 11, 2021, I therefore find that the Tenant was served in accordance with section 59(3) of the *Act* and rule 3.1 of the Rules of Procedure.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. I verified that the hearing

information contained in the Notice of Hearing was correct and I note that the Agent had no difficulty attending the hearing on time using this information. Based on the above, as there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, and as the Agent and I attended the hearing on time and ready to proceed, I therefore commenced the hearing as scheduled at 1:30 P.M. on January 7, 2022, despite the absence of the Tenant or an agent acting on their behalf.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Agent, copies of the decision and any orders issued in favor of the Landlords will be emailed to them at the email address provided in the Application.

#### Preliminary Matters

Although three tenants were listed as respondents in the Application, M.B., T.B. and I.B., the tenancy agreement indicates that T.B. and I.B. are M.B.'s minor children, aged 13 and 2 at the time the tenancy agreement was entered into. As a result, I find that T.B. and I.B. are actually occupants of the rental unit, rather than tenants under the *Act*, and that only M.B. is a tenant under the *Act* and the tenancy agreement. The hearing therefore proceeded against only M.B., who is referred to as the Tenant throughout this decision.

#### Issue(s) to be Decided

Are the Landlords entitled to compensation for damage cause by the Tenant, their pets, or their guests to the unit, site, or property?

Are the Landlords entitled to compensation for monetary loss or other money owed?

Are the Landlords entitled to recovery of unpaid rent and/or utilities?

Are the Landlords entitled to recovery of the filing fee?

Are the Landlords entitled to withhold the security deposit towards any amounts owed?

### Background and Evidence

The tenancy agreement in the documentary evidence before me states that the fixed term tenancy commenced on June 1, 2020, and was set to end on May 31, 2021, after which time the tenancy could continue on a month-to-month basis. The tenancy agreement states that rent in the amount of \$1,575.00 was due on the first day of each month, and that a security deposit in the amount of \$788.00 was required. The tenancy agreement also contains a \$600.00 liquidated damages clause. At the hearing the Agent stated that the security deposit was paid and is still held in trust.

The Agent stated that the tenancy ended on May 31, 2021, as per the Tenant's written notice to end tenancy, but that the Tenant actually vacated the rental unit on June 1, 2021. The Agent stated that move-in and move-out condition inspections and reports were completed with the Tenant at the start and the end of the tenancy, and that copies were provided to the Tenant as required by the *Act* and the regulation. The Agent stated that the Tenant provided their forwarding address in writing on the move-out condition inspection report on May 31, 2021, and provided a copy of the report showing this address.

The Agent stated that the Tenant had withheld \$1,150.00 in rent without authority to do so under the *Act* as they thought that the Landlords had taken too long to repair an appliance. As a result, the Agent stated that the Landlords are seeking recovery of this amount.

The Agent stated that at the end of the tenancy, the Tenant failed to leave the rental unit reasonably clean and undamaged, except for pre-existing damage and reasonable wear and tear, as required by section 37(2)(a) of the *Act*. As a result, the Agent stated that the Landlords suffered \$1,159.60 in monetary losses for cleaning and repair costs to bring the state of the rental unit up to what is required by section 37(2)(a) of the *Act*. The Agent submitted photographs and videos showing the state of the rental unit at the end of the tenancy, including its lack of cleanliness and damage, invoices and receipts for cleaning and repair costs, and an incomplete copy of the condition inspection report(s). The Agent also sought recovery of the \$100.00 filing fee.

Although the hearing remained open for 43 minutes, no one called into the hearing on behalf of the Tenant to provide any evidence or testimony for my consideration.

### Analysis

As there is no evidence to the contrary, I find that a tenancy agreement to which the *Act* applies existed between the parties, the terms of which are set out in the tenancy agreement before me for consideration, as summarized above.

Based on the Agent's uncontested documentary evidence and affirmed testimony, I am satisfied that the Tenant withheld \$1,150.00 in rent without authorization to do so, contrary to section 26 of the *Act*. As a result, I award the Landlords recovery of this amount.

Based on the uncontested and affirmed documentary evidence before me for consideration, which includes condition inspection report(s), photographs and videos that I am satisfied show the condition of the rental unit at the end of the tenancy, and invoices and receipts for damage repair and cleaning costs, I am also satisfied that the Tenant failed to leave the rental unit reasonably clean and undamaged at the end of the tenancy, except for pre-existing damage and reasonable wear and tear, as required by section 37(2)(a) of the *Act*. I am satisfied that the Landlords suffered a loss in the amount of \$1,159.60 as a result, and that they mitigated this loss as required by section 7 of the *Act* by doing the cleaning and repairs largely themselves at a reasonably economic rate. As a result, I award the Landlords recovery of these costs. As the Landlords were successful in their Application, I also award them recovery of the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Having made these findings, I will now turn to the matter of the security deposit. As there is no evidence before me that the Landlords extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act*, I find that they did not. I accept the Agent's testimony that the Tenant's forwarding address was received in writing on May 31, 2021, as shown on the move-out condition inspection report. As I am satisfied that the tenancy ended on May 31, 2021, and as the Application seeking retention of the Tenant's security deposit was filed on June 15, 2021, I find that the Landlords complied with section 38(1) of the *Act*. Pursuant to section 72(2)(b) of the *Act*, I therefore authorize the Landlords to retain the \$788.00 security deposit in partial repayment of the above owed amounts. Pursuant to section 67 of the *Act*, I also award the Landlords a Monetary Order for the balance owed, in the amount of \$1,621.60, and I order the Tenant to pay this amount to the Landlords.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlords a Monetary Order in the amount of **\$1,621.60**. The Landlords are 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.

The Landlords are also authorized to retain the \$788.00 security deposit.

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: January 20, 2022

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Residential Tenancy Branch