



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DEVONSHIRE PROPERTIES  
INC. and [tenant name suppressed to protect privacy]

## **DECISION**

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

### Introduction

On July 21, 2021, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking to apply the security deposit and pet damage deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

P.L. and I.N. attended the hearing as agents for the Landlord; however, the Tenant did not make an appearance at any point during the 56-minute teleconference. At the outset of the hearing, I informed the agents for the Landlord that recording of the hearing was prohibited and they were reminded to refrain from doing so. They acknowledged this term, and they provided a solemn affirmation.

P.L. advised that she served the Tenant the Notice of Hearing and evidence package by registered mail on August 23, 2021 (the registered mail tracking number is noted on the first page of this Decision). She confirmed that this package was delivered to the Tenant. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant has been duly served with the Landlord’s Notice of Hearing and evidence package. As such, I have accepted this documentary evidence and will consider it when rendering this Decision.

The Tenant did not submit any documentary evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit and pet damage deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

P.L. advised that the tenancy started on December 5, 2020 as a fixed term tenancy ending on January 31, 2022. However, the tenancy ended on June 26, 2021 when someone returned the keys on behalf of the Tenant. Rent was established at \$1,750.00 per month and was due on the first day of each month. A security deposit of \$875.00 and a pet damage deposit of \$875.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She testified that a move-in inspection report was conducted on December 13, 2020. She stated that the Tenant provided notice to end her tenancy on June 23, 2021 that was effective for July 31, 2021; however, the Tenant had someone return the keys to the Landlord on June 26, 2021. Multiple attempts were made to schedule a move-out inspection, and a Notice of Final Opportunity to Schedule a Condition Inspection was served the Tenant anyways, effective for July 13, 2021. A move-out inspection was conducted on July 16, 2021 in the Tenant's absence. A copy of the move-in and move-out inspection report and the Notice of Final Opportunity to Schedule a Condition Inspection were submitted as documentary evidence.

She stated that the Tenant provided her forwarding address in writing on June 23, 2021. However, on this Notice to Landlord submitted as documentary evidence, it appears as if the Tenant provided written authorization for the Landlord to keep the security deposit.

She advised that the Landlord is seeking compensation in the amount of **\$1,750.00** for July 2021 rent because the Tenant broke the fixed term tenancy early and abandoned the rental unit on June 26, 2021. She stated that the Landlord immediately advised their leasing agents about the vacancy, and that ads were placed on digital platforms such as

Facebook Marketplace. The rental unit was eventually re-rented on September 1, 2021. She stated that the Landlord was not seeking compensation at this point for August 2021 rent.

She advised that the Landlord is seeking compensation in the amount of **\$1,553.53** for a rent incentive given provided that the Tenant fulfilled the entire length of the fixed term tenancy as per the tenancy agreement. She stated that the Tenant did not pay any rent for December 2020 as the rent incentive.

She advised that the Landlord is seeking compensation in the amounts of **\$100.00** for the monthly parking fee and **\$35.00** for the monthly pool access fee, as per the tenancy agreement.

She advised that the Landlord is seeking compensation in the amount of **\$1,200.00** for the cost of junk removal as the Tenant left lots of property and refuse, including pet feces, behind. She referenced pictures submitted as documentary evidence to substantiate the amount of refuse left behind. While she did not submit a copy of the invoice for the cost of junk removal, she found the receipt and advised that it actually cost only \$294.00 to dispose of all these items.

Finally, she advised that the Landlord is seeking compensation in the amount of **\$431.20** for the cost of replacing drapes that the Tenant and/or pet damaged. She referenced pictures submitted as documentary evidence to substantiate this damage. While she did not submit an invoice for this cost, she explained the rationale and the justification for this amount.

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed upon

day. As well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulations* (the “*Regulations*”) outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenant has a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit or pet damage deposit for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenant must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

As the consistent and undisputed evidence is that a move-in inspection report was conducted with the Tenant and that a move-out inspection report was conducted without the Tenant, as she abandoned the rental unit, I am satisfied that the Landlord did complete these reports in accordance with the *Act*. As such, I find that the Landlord has not extinguished the right to claim against the deposits.

Furthermore, Section 38 of the *Act* outlines how the Landlord must deal with the security deposit and pet damage deposit at the end of the tenancy. With respect to the Landlord’s claim against the Tenant’s security deposit and pet damage deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant’s forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenant, pursuant to Section 38(6) of the *Act*. As it appears as if the Tenant provided written authorization on June 23, 2021 for the Landlord to keep the security deposit, I am satisfied that the Landlord did not have to

comply with Section 38 in regards to this. As the Landlord was permitted to keep this deposit to apply to any losses, this will be reflected in the monetary award table below.

However, with respect to the pet damage deposit, even though the Tenant's notice to end the tenancy on June 30, 2021 would automatically self-correct to July 31, 2021, the undisputed evidence before me is that the Tenant gave up vacant possession of the rental unit on June 26, 2021. Given that the Landlord received the keys back that day, it would be reasonable to infer that the Tenant would not be returning. As such, I am satisfied that this would be the end date of the tenancy. Furthermore, as the Landlord had the Tenant's forwarding address on June 23, 2021, I find that the Landlord must have returned the pet damage deposit or made the Application to claim against it within 15 days of June 26, 2021.

It is not clear to me why the Landlord waited until July 21, 2021 to make the Application. As well, it does not make sense that a final opportunity to conduct a move-out inspection would have been scheduled for July 13, 2021 given that the Tenant had already given up vacant possession of the rental unit on June 26, 2021. While the Landlord's right to claim against the pet damage deposit was not extinguished, I am satisfied that the doubling provisions do apply to the pet damage deposit in this instance as the Landlord did not make the Application to claim against it within 15 days of the end of the tenancy. As such, I grant the Tenant a monetary award in the amount of **\$1,750.00**.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, 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. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenant fail to comply with the *Act*, regulation, or tenancy agreement?

- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

With respect to the Landlord's claims for compensation in the amount of \$1,750.00 for July 2021 rent, I am satisfied from the undisputed evidence that the Tenant broke the fixed term tenancy early and that the Landlord immediately took steps to attempt to re-rent the property as quickly as possible. As such, I grant the Landlord a monetary award in the amount of **\$1,750.00** to satisfy this claim.

Regarding the Landlord's claims for compensation in the amount of \$1,553.53 for a rent incentive that the Tenant benefitted from when she agreed to a fixed term tenancy of over one year but did not stay for the entire agreed upon length, I am satisfied from P.L.'s solemnly affirmed testimony about the interpretation in the tenancy agreement that the Tenant should not be entitled to the incentive as she did not honour the length of the term agreed upon. As such, I grant the Landlord a monetary award in the amount of **\$1,553.53** to satisfy this debt.

With respect to the Landlord's claims for compensation in the amounts of \$100.00 and \$35.00 for the monthly parking and pool access fees, based on the undisputed evidence of these being owed on the tenancy agreement, I grant the Landlord a monetary award in the amount of **\$135.00** to satisfy these claims.

Regarding the Landlord's claims for compensation in the amount of \$1,200.00 for the cost of junk removal as the Tenant left lots of property and refuse, including pet feces, behind, I am satisfied from the undisputed evidence presented that the Tenant did not leave the rental unit in a re-rentable state. However, based on the solemnly affirmed testimony of P.L., I grant the Landlord a monetary award in the amount of **\$294.00** to rectify this issue as this was the actual cost that the Landlord spent.

Finally, with respect to the Landlord's claims for compensation in the amount of \$431.20 for the cost of replacing drapes that the Tenant and/or pet damaged, I am satisfied from the undisputed evidence that the Tenant was negligent for this damage. As such, I grant the Landlord a monetary award in the amount of **\$431.20** to remedy this issue.

As the Landlord was successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenant to the Landlord**

Item	Amount
July 2021 rent	\$1,750.00
Rent incentive	\$1,553.53
Parking and pool access	\$135.00
Refuse disposal	\$294.00
Drape replacement	\$431.20
Security deposit	-\$875.00
Doubling of pet damage deposit	-\$1,750.00
Filing fee	\$100.00
<b>Total Monetary Award</b>	<b>\$1,638.73</b>

Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$1,638.73** 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.

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: February 15, 2022

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Residential Tenancy Branch