



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNRL-S, MNDL-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 security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent and for damage to the rental unit in the amount of \$3,901.19 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 1:57 pm in order to enable the tenant to call into the hearing scheduled to start at 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 Dispute Resolution Proceeding. I used the teleconference system to confirm that the landlord and I were the only ones who had called into the hearing.

The landlord testified that the tenant did not provide him with a forwarding address when she moved out of the rental unit. He testified that the tenant set up a mail forwarding system so that mail was redirected from the rental unit to her new address. He testified that he sent the tenant the notice of dispute resolution package and supporting documentary evidence via registered mail on August 17, 2021. He provided a Canada Post tracking number (reproduced on the cover of this decision) and a screenshot showing the package was delivered on August 25, 2021 into evidence. Additionally, he testified that he received mail from the tenant which had a return address in a neighboring municipality on the envelope. He testified that he sent the above-noted documents to that address by registered mail as well (he did not provide a tracing number for this mailing). I find that the tenant has been sufficiently served with these documents for the purposes of the Act.

On February 2, 2022, the landlord filed an amendment to this application to change the spelling of the tenant's surname (replacing the letter "V" with a "T") and adding the street number to the address of the rental unit. Both of these changes brought the information on this application in line with the information on the tenancy agreement. The landlord testified that due to time constraints, emailed this amendment to the tenant

using an email address the two had previously used to communicate during the tenancy.

In the circumstances, given the relatively minor nature of the amendments, and that the email address landlord sent it to was one that was used during the tenancy by the parties to communicate about the tenancy (as can be seen by email communication entered into evidence), I find it appropriate to deem that such service is sufficient for the purposes of the Act, pursuant to section 71(1).

### **Issues to be Decided**

Is the landlord entitled to:

- 1) a monetary order for \$3,901;
- 2) recover the filing fee;
- 3) retain the security deposit in partial satisfaction of the monetary orders made?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the landlord, not all details of his 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 tenancy agreement starting May 1, 2020. Monthly rent was \$1,500 plus \$300 for utilities. Both were payable on the first of each month. The tenant paid the landlord a security deposit of \$750, which the landlord continues to hold in trust for the tenant. The parties completed a move in condition inspection report at the start of the tenancy.

The landlord testified that the tenant did not pay any rent for May or June 2021. He testified that towards the end of the tenancy the relationship between him and the tenant was strained. He issued a notice to end tenancy (this was not entered into evidence). At some point after issuing this notice, the tenant advised the landlord that she would be moving out of the rental unit but did not provide him with a date when she would do this. On June 15, 2021, she emailed the landlord stating "I moved out. You're not here to do a walkthrough so I took a video. Key is inside."

The landlord testified that as he did not know when she would be moving out, and as she vacated the rental unit prior to telling him that she had moved out, he was unable to do a move out condition inspection with the tenant. He testified that he did one in her absence, and took a video of it, but did not complete a move out condition inspection form. He testified that the tenant told him not to bother contacting her after the tenancy ended.

The landlord testified that while the tenant returned the key to the rental unit, she did not return the key to the rental unit's mailbox when she left. He had to have the mailbox

keys changed at a cost of \$30.45. He submitted a receipt from Canada Post supporting this amount.

The landlord testified that the tenant left garbage and debris outside of the rental unit on the residential property. He submitted two photographs showing the mattress, large rolls of fabric, and some miscellaneous kitchen and cleaning objects. The landlord testified that he took these items to the garbage dump. He seeks to recover the dump fees. He submitted a receipt for \$16 from the local dump.

The landlord testified that the tenant damaged the walls of the rental unit by using adhesive material to affix objects to the walls. He testified that when she took these objects down, she damaged two of the walls by ripping off the paint and the drywall paper. Additionally, he testified that the wall in the hallway was damaged by the tenant's pet dog. The landlord submitted a copy of the move-in condition inspection report which did not list any damage to the walls.

The landlord submitted photographs of two walls which had small amount of patching, filling, and sanding repairs done together in several places. The landlord did not submit a photo showing the original state of the walls prior to these repairs being made. He also submitted photographs of the wall damaged by the pet. The landlord testified that the cost to repair this damage and have those areas repainted was \$254.74. He submitted an invoice supporting this.

## **Analysis**

### **1. Unpaid Rent**

I accept the landlord's undisputed testimony that the tenant did not pay any rent for May or June 2021. The tenancy agreement requires that the tenant pay \$1,800 per month for rent and utilities and that this amount is due on the 1st of each month. As the tenant did not pay rent or utilities fees when they were due, I find that she must do so now. I ordered the tenant to pay the landlord \$3,600 representing unpaid rent for May and June 2021.

### **2. Damage**

Residential Tenancy Branch 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, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Rule of Procedure 6.6 states:

**6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

So, the landlord must prove it is more likely than not that the tenant breached section 37 (2) of the act, that he suffered he quantifiable loss as a result of this breach, and that he acted reasonably to minimize his loss.

I accept the landlord's testimony, supported by photographs and the move-in condition inspection report, that the tenant damaged the walls of the rental unit as set out above. I find that such damage is more than "reasonable wear and tear". I find that by leaving some belongings in the rental unit and on the residential property after she left, the tenant failed to leave the rental unit "reasonably clean".

Additionally, I accept the landlord's testimony that the tenant failed to return the mailbox keys at the end of the tenancy.

Such conduct represents breaches of section 37(2)(a) and (b) of the Act. I find that, as a result of these breaches, the landlord suffered monetary loss as follows:

Description	Amount
Key replacement	\$30.45
Dump fee	\$16.00
Wall repair	\$254.74
<b>Total</b>	<b>\$301.19</b>

I find that each of these costs was reasonably incurred are for a reasonable amount. Accordingly, I order that the tenant pay the landlord \$301.19.

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

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

### **Conclusion**

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$3,251.19, representing the following:

Description	Amount
Unpaid rent	\$3,600.00
Key replacement	\$30.45
Dump fee	\$16.00
Wall repair	\$254.74
Filing fee	\$100.00
Security deposit credit	-\$750.00
<b>Total</b>	<b>\$3,251.19</b>

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 22, 2022

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Residential Tenancy Branch