



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the security and pet damage deposits (the deposits), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

### Preliminary Issue – Service

The landlord affirmed he served the notice of hearing and the evidence (the materials) by registered mail. The tenant confirmed she received the materials on January 06, 2022. Based on the testimony offered by both parties I find the landlord served the materials in accordance with section 89(1)(c) of the Act.

The tenant served the response evidence at the landlord's address for service in person on January 21, 2022 to the attendant named MA. The landlord affirmed he did not receive the materials and that he is not aware if MA works at his address for service.

Section 89(1)(b) of the Act states:

An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

Based on the tenant's convincing testimony, I find the tenant served the response evidence in accordance with section 89(1)(b) of the Act.

### Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. a monetary order for loss?
3. an authorization to retain the deposits?
4. an authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed they entered into a fixed term tenancy agreement from February 01, 2021 to January 31, 2022. The tenancy started on February 01, 2021 and ended on April 28, 2021. Monthly rent was \$1,600.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$800.00 and a pet damage deposit of \$800.00 were collected. The landlord holds the deposits in the amount of \$1,600.00 in trust. The tenancy agreement was submitted into evidence. It states:

Please note that historically utilities have average \$250.00 per month. The Landlord will pay utilities up to this amount. It is the expectation of the Landlord that all utilities be used in an efficient and environmentally conscious manner. If utilities exceed this amount, the tenant will be responsible for the lower floors proportionate share, or 1/3 of the amount in excess of over \$250.00.

The landlord submitted this application on July 14, 2021. The tenant served her forwarding address in writing on December 15, 2021. The landlord confirmed receipt of the forwarding address on December 27, 2021. The tenant did not authorize the landlord to retain the deposits.

The landlord is claiming for key replacement expenses in the amount of \$50.00, as the tenant received two keys and only returned one key. The landlord affirmed he is asking for \$50.00 because of his time to obtain the new key and the cost of the new key. The tenant affirmed the cost of a new key is \$4.99.

The landlord is claiming compensation for his time managing the rental unit in the amount of \$6,000.00 and mileage expenses in the amount of \$223.30. The landlord submitted a spreadsheet into evidence:

<u>Description</u>	<u>Time (hours)</u>	<u>Hourly Rate</u>	<u>Total</u>
February 16th, 2021	-first visit regarding damages from dog	1	\$200 \$200
March 24 h, 2021	- correspondence via phone, text, email re abandoned suite	1	\$200 \$200
March 24 to April 28th	- correspondence and research re suite abandonment RTB website	5	\$200 \$1,000
March 24 to April 28th	- 3 separate phone conversations with Residential Tenancy Branch	3	\$200 \$600
May 6th, 2021	- Landlord discussed with RTB condition inspection without tenant	0.5	\$200 \$100
May 7th, 2021	- Landlord assessed damages to suite	1.5	\$200 \$300
May 7th, 2021	- Landlord confirmed with RTB how to fill out move-out inspection without tenant present	1	\$200 \$200
May 10th, 2021	- Landlord assessed and recorded damages	3.5	\$200 \$700
May 11th to 12th	-Landlord called 4 different contractors to determine availability for repairs	4	\$200 \$800
May 14th, 2021	-Landlord was able to meet [contractor] contracting on site to assess cost	2	\$200 \$400
May 18th, 2021(morning)	-Landlord met [contractor] to determine supplies required and measure materials	1	\$200 \$200
May 18th, 2021 (afternoon)	- Landlord met [contractor] to begin demo work and start repair	1	\$200 \$200
May 19th, 2021	-Landlord met [contractor] and [contractor] to assess drywall damage & start to cleanup yarc	2	\$200 \$400
May 20th, 2021	-Landlord met [contractor] to provide access to suite	0.5	\$200 \$100
May 21st, 2021	-Landlord met [contractor] to provide access to suite	0.5	\$200 \$100
May 22nd, 2021	-Landlord visted site to determine final completion of work	1	\$200 \$200
May 23rd, 2021	-Landlord visted site to provide cleaners access & clean up yard/ deck	1.5	\$200 \$300

\*Please note as a Management Consultant I bill \$600 to \$1,000 per hour to cover overhead and expenses. \$200 has been charged to reduce cost to tenant. Based on a standard project management fee.

The landlord charged \$.058 per kilometre he drove when he went to the rental unit and to buy the materials for the repairs. The tenant affirmed she is not liable for the landlord's time and that the landlord lives in another city.

The landlord is claiming unpaid utilities in the amount of \$44.37. The landlord affirmed the tenant agreed to pay 1/3 of the electricity bills above \$250.00. The tenant agreed to pay the amount requested.

The landlord is claiming the cost of registered mail in the amount of \$13.50.

The landlord is claiming cleaning expenses in the amount of \$283.50, as the tenant did not clean the 800 square feet, 2 bedroom rental unit. The landlord submitted a cleaning receipt in the amount of \$283.50. The tenant agreed to pay the amount requested.

The landlord is claiming for repair labour expenses in the amount of \$2,829.75, as the tenant's dog damaged the drywall, the doors and the furniture. The landlord affirmed that he paid a contractor the amount of \$2,829.75 for repairing the doors and to paint the damaged drywall (receipt submitted into evidence). The landlord submitted a spreadsheet indicating that 21 hours of work at the contractor's rates of \$75.00 and \$55.00 were needed to complete the necessary repairs. The receipt indicates the labour cost of \$895.00 and the contractor charged a management fee of \$500.00. The landlord affirmed the rental unit was painted before the tenancy started.

The tenant affirmed that the amount of money the landlord is charging is excessive. The landlord affirmed that he consulted several contractors, but they did not want to take this service because it was a small service.

The landlord is claiming compensation in the amount of \$71.61 because the tenant used one box of laminate floor stored in the rental unit to make shelves and damaged the laminate floor. The tenant affirmed the landlord did not inform her that she could not use the laminate floor and that there were many boxes.

The landlord is claiming compensation in the amount of \$400.00 for repair supplies. The landlord affirmed he purchased gallons of paint, trim board, drywall and screws to repair the damages caused by the tenant and that he spent approximately \$400.00 to buy these items. The landlord submitted a written statement: "Not sure how to bill for these? Approx. cost was \$400.00".

The total amount the landlord is claiming is \$10,032.73.

### Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

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.

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 the case is on the person making the claim.

### Key

Section 37(2)(b) of the Act states:

When a tenant vacates a rental unit, the tenant must: 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.

Based on the uncontested testimony, I find the landlord proved, on a balance of probabilities, the tenant breached section 37(2)(b) of the Act by failing to return all the keys to the landlord when the tenancy ended and the landlord incurred a loss.

The landlord did not indicate how much he paid for the new key and how much time he needed to obtain the new key. I find the landlord failed to prove, on a balance of probabilities, a loss in the amount of \$50.00.

Based on the tenant's convincing testimony, I find the landlord suffered a loss of \$4.99.

I award the landlord \$4.99 for the new key.

#### Managing time

Based on the landlord's testimony and the spreadsheet, I find the landlord failed to prove, on a balance of probabilities, that he suffered a loss because the tenant failed to comply with the Act. The landlord's time corresponding with the Residential Tenancy Branch and inspecting the unit is not recoverable under the Act. I find the landlord did not explain why he spent 17 hours meeting with the contractors to repair the rental unit. The landlord did not explain why he needed to drive 35 kilometres each time he attended the rental unit.

Thus, I dismiss the landlord's claim for managing time and driving expenses.

#### Unpaid utilities

Based on the landlord's undisputed testimony and the tenancy agreement, I find the tenant must pay 1/3 of the electricity bills above \$250.00.

Based on the landlord's uncontested testimony, I find the tenant breached the tenancy agreement by not paying the utilities in the amount of \$44.37 and the landlord suffered a loss.

As such, I award the landlord compensation in the amount of \$44.37 for this loss.

#### Registered mail

The cost of registered mail is litigation cost not recoverable under the Act.

Thus, I dismiss the landlord's claim for compensation for registered mail cost.

#### Cleaning expenses

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

Residential Tenancy Branch Policy Guideline 1 states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

Based on the uncontested testimony offered by both parties and the receipt, I find the landlord proved, on a balance of probabilities, that the tenant breached section 37(2)(a) of the Act by failing to reasonably clean the rental unit and the landlord suffered a loss of \$283.50.

Thus, I award the landlord \$283.50 for cleaning expenses.

#### Repair labour expenses

Section 32(3) of the Act states: "A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant."

I accept the uncontested testimony that the tenant's dog damaged the drywall, the doors and the furniture.

Based on the landlord's convincing and detailed testimony, the receipt and the contractor's spreadsheet, I find the landlord proved, on a balance of probabilities, that the tenant breached section 32(3) of the Act by failing to repair the rental unit and the landlord incurred a loss in the amount of \$2,829.75.

Thus, I award the landlord \$2,829.75 for repair labour expenses.

#### Repair supplies expenses

I find the landlord's testimony about the repair supplies was vague. The landlord did not submit a receipt for the repair supplies cost. I find the landlord failed to prove, on a balance of probabilities, the amount of the loss suffered.

Thus, I dismiss the landlord's claim for repair supplies expenses.

### Laminate Floor

Based on the landlord's convincing and undisputed testimony, I find the landlord proved, on a balance of probabilities, the tenant breached section 32(3) of the Act by using the box of laminate floors to make shelves and the landlord incurred a loss of \$71.61.

I award compensation in the amount of \$71.61.

### Filing fee

As the landlord was successful, I award the recovery of the filing fee paid for this application in the amount of \$100.00.

### Deposits

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

I order the landlord to retain the deposits of \$1,600.00 in partial satisfaction of the monetary award.

In summary, the landlord is entitled to:

<b>Expenses</b>	<b>\$</b>
Key	4.99
Unpaid Utilities	44.37
Cleaning expenses	283.50
Repair labour	2,829.75
Laminate Floor	71.61
Filing fee	100.00
Subtotal	3,334.22
Minus deposits	1,600.00
<b>Total</b>	<b>1,734.22</b>



Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain the \$1,600.00 deposits and grant the landlord a monetary order in the amount of \$1,734.22.

The landlord is provided with this order in the above terms and the tenant must be served with this order in accordance with the Act. 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 02, 2022

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Residential Tenancy Branch