



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GEORGIAN HOUSE  
and [tenant name suppressed to protect privacy]

## **DECISION**

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

### Introduction

On June 15, 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 towards that debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord’s Application was originally set down for a hearing on January 7, 2021 at 1:30 PM but was subsequently adjourned for reasons set forth in the Interim Decision dated January 7, 2021. This Application was then set down for a final, reconvened hearing on April 5, 2022 at 1:30 PM.

A.W. and C.M. attended the final, reconvened hearing as agents for the Landlord. Both Tenants attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, neither party could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, the parties were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

Service of documents was discussed at the original hearing, and I was satisfied of such. Consequently, I have accepted all of the evidence and will consider it when rendering this Decision.

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 towards these debts?
- 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.

All parties agreed that the tenancy started on August 1, 2020, as a fixed term tenancy of one year ending on July 31, 2021. However, the Tenant gave up vacant possession of the rental unit on June 2, 2021. Rent was established at an amount of \$1,690.00 per month and was due on the first day of each month. A security deposit of \$845.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

They also agreed that a move-in inspection was conducted with the Tenant on August 1, 2020 and that a move-out inspection was conducted with the Tenant on June 2, 2021. A copy of the report was submitted as documentary evidence. As well, the Tenant provided her forwarding address in writing to C.M on June 2, 2021.

A.W. advised that the Landlord is seeking compensation in the amount of **\$845.00** because the Tenant was in a fixed term tenancy until July 31, 2021, but she gave written notice on April 12, 2021, with an effective end date of tenancy of May 31, 2021. However, she then vacated the rental unit on June 2, 2021. She stated that the Landlord is seeking compensation in the amount of rent from June 1 to June 14, 2021 only as the Landlord was able to re-rent the unit on June 15, 2021. She stated that ads were immediately posted to rent the unit, and a sign was put up in front of the building.

The Tenant confirmed that she provided written notice to end her fixed term tenancy early. She stated that the Landlord asked her to place an ad to rent the unit, so she did so, and she also confirmed that the Landlord put up a sign. She agreed that she verbally agreed to pay rent to June 15, 2021. When she conducted the move-out inspection on June 2, 2021 and returned the keys, the Landlord called a locksmith and changed the locks.

A.W. advised that the Landlord is seeking compensation in the amount of **\$585.00** for the cost of fixing a number of deficiencies in the rental unit at the end of the tenancy; however, there was a lack of documentary evidence submitted to support these claims. As such, she stated that the only claim being pursued out of this amount is for **\$150.00** for curtain cleaning. To support this claim, she referenced a Georgian House Cleaning Checklist form that was submitted as documentary evidence that was signed by the Tenant on August 2, 2020.

A.W. advised that due to her profession, she was very detailed with documents and that she did not sign off on curtain cleaning. She stated that this was a “form of trickery”. She stated that at move-in, C.M. simply washed these curtains in the washing machine and that they were not dirty at the time of move-out. She made references to the conditions noted in the inspection reports.

A.W. advised that the Landlord is seeking compensation in the amount of **\$715.50** which is broken down as follows: **\$500.00** for the cost of an extra occupant that was living in the rental unit, **\$111.50** for the cost of the locksmith, **\$100.00** for the cost of the Tenant moving out through the front door contrary to the Landlord’s rules, and **\$4.00** for the cost of storing an extra bike in the storage area. Her and C.M made submissions on these issues, and they referenced documentary evidence submitted to support these claims.

The Tenant made submissions refuting the Landlord’s allegations and she advised that there is little documentary evidence to support these claims.

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

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 have 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 for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

The undisputed evidence is that both a move-in inspection and a move-out inspection were conducted by the parties. As such, I am satisfied that the Landlord complied with the *Act* and *Regulations* in completing these reports. Therefore, I find that the Landlord has not extinguished the right to claim against the deposit.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenant's 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 deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, the Tenant gave up vacant possession of the rental unit and provided her forwarding address in writing on that same day. Furthermore, the Landlord made an Application to attempt to claim against the deposit on June 15, 2021. As the Landlord made this Application within 15 days of receiving the Tenant's forwarding address in writing, and as the Landlord did not extinguish the right to claim against the deposit still, I am satisfied that the Landlord has complied with the *Act*. Therefore, I find that the doubling provisions do not apply to the security deposit in this instance.

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."

Furthermore, Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. In claims for loss of rental income in circumstances where the Tenant ends the tenancy contrary to the provisions

of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

As well, I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also need to turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence before me, there is no dispute that the parties entered into a fixed term tenancy agreement for one year, starting on August 1, 2020. Yet the Tenant gave written notice to end this tenancy early. Sections 44 and 45 of the *Act* set out how tenancies end, and they also specify that the Tenant must give written notice to end a tenancy. As well, this notice cannot be effective earlier than the date specified in the tenancy agreement as the end of the tenancy. Section 52 of the *Act* sets out the form and content of a notice to end a tenancy.

What this means is that the Tenant is still potentially responsible for rent up until the end of the tenancy should the Landlord not be able to mitigate this loss and re-rent the unit. Just because the Tenant returned the keys on June 2, 2021, it does not mean that she could still not be responsible for any rental loss suffered. Given that she provided written notice to end her tenancy on May 31, 2021, the Landlord would have then attempted to re-rent the unit for June 1, 2021, and if this was achieved, then the Tenant would not owe rent for June 2021. Alternately, the Tenant could have chosen to overhold, but this would clearly make it impossible for the Landlord to re-rent because the unit would still obviously be occupied by the Tenant. Furthermore, by doing so, it would be impossible to know when they could commit to a new tenant to attempt to mitigate this loss.

Based on the undisputed evidence, the Tenant did not end the tenancy in accordance with the *Act* as she broke the fixed term early. Therefore, I find that the Tenant vacated the rental unit contrary to Sections 45 and 52 of the *Act*. Moreover, I find that the evidence indicates that as a result of the Tenant's actions, the Landlord could have suffered a rental loss. As the Tenant gave up possession of the rental unit on June 2, 2021, I am satisfied that the Landlord clearly could not have mitigated this loss for June 1, 2021. Had the Tenant wanted to give herself the best chance of not being responsible for June 2021 rent, she would have given up vacant possession of the rental unit on May 31, 2021 as per her written notice.

As the Landlord had been provided with minimal time after the Tenant gave up vacant possession, I am satisfied that the Landlord was put in a position that it would have been difficult to re-rent the unit immediately. However, as the Landlord was successfully

able to do so for June 15, 2021, I grant the Landlord a monetary award for June 1 - 14, 2021 in the amount of **\$845.00**.

Regarding the Landlord's claim in the amount of \$150.00 for curtain cleaning, while the Tenant claimed that she was meticulous in her paperwork and that she never signed such a document, I have before me a Georgian House Cleaning Checklist form, dated August 2, 2020, with the Tenant's signature on it. This form indicates that \$150.00 will be charged for a curtain cleaning fee. In addition, the move-out inspection report indicates that the curtains required cleaning. Given this, I prefer the Landlord's evidence and I grant the Landlord a monetary award in the amount of **\$150.00** to rectify this issue.

Finally, regarding the Landlord's claims for compensation in the amounts \$500.00, \$111.50, \$100.00, and \$4.00, I find it important to note that A.W. stated earlier that the \$111.50 locksmith fee was no longer being sought by the Landlord. Furthermore, given that the Landlord has submitted little persuasive or compelling documentary evidence that would support these other claims, I dismiss these in their entirety.

As the Landlord was partially successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these claims.

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

#### **Calculation of total Monetary Award Payable by the Tenants to the Landlord**

Rental arrears	\$845.00
Curtain cleaning	\$150.00
Filing fee	\$100.00
Security deposit	-\$845.00
<b>TOTAL MONETARY AWARD</b>	<b>\$250.00</b>

#### Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$250.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: April 14, 2022

---

Residential Tenancy Branch