



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDL-S, FFL**

### Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”). The Landlord applied for the following:

- a monetary order for compensation to make repairs that the Tenants, their pets or their guests caused during the tenancy 67;
- authorization to keep the Tenants’ security and pet damage deposits under section 38; and
- authorization to recover the application fee of the Application from the Tenants.

The Tenants did not attend this hearing. I left the teleconference hearing connection open until 2:04 pm in order to enable the Tenants (“FJ” and “IM”) to call into this teleconference hearing scheduled for 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 (“NDRP”). I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

### Preliminary Matter – Service of NDRP and Landlord’s Evidence on Tenants

The Landlord stated FJ emailed him on July 29, 2021 to provide him with the Tenants’ forwarding address (“Forwarding Address”) and requested that he return the Tenants’ security and pet damage deposits to him at that address. The Landlord submitted a copy

of the FJ's email received by him on July 29, 2021 into evidence. The Landlord stated he made two envelopes, each containing the NDRP and his evidence and then placed the two envelopes into one package ("NDRP Package"). The Landlord stated he served the NDRP Package on the Tenants by registered mail to the Forwarding Address on March 2, 2022. The Landlord provided the Canada Post tracking number for service of the NDRP Package to corroborate his testimony.

Section 89(1) of the Act states:

- 89 (1)** 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:
- (a) by leaving a copy with the person;
  - (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
  - (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
  - (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
  - (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
  - (f) by any other means of service provided for in the regulations.

Part 3 of *Residential Tenancy Policy Guideline 12*, states in part:

All parties named on an application for dispute resolution must be served notice of proceedings, including any supporting documents submitted with the application. *Where more than one party is named on an application for dispute resolution, each party must be served separately.* Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.

[Emphasis in italics added]

As the Landlord failed to serve the Tenants separately by registered mail, the service of the NDRP was invalid. Section 71 of the Act states:

- 71** (1) The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.
- (2) In addition to the authority under subsection (1), the director may make any of the following orders:
- (a) that a document must be served in a manner the director considers necessary, despite sections 88 [*how to give or serve documents generally*] and 89 [*special rules for certain documents*];
  - (b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;
  - (c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

The undisputed testimony of the Landlord was he used FJ's email address to serve a copy of the NDRP on FJ on March 2, 2022. I find that the Landlord's substituted service of the NDRP on FJ was reasonable in the circumstances. Pursuant to section 71(2)(b), I find FJ was sufficiently served with the NDRP and was deemed to have received the NDRP on March 5, 2022, being three days after the Landlord emailed it to FJ.

As noted above, the Landlord served the NDRP and his evidence on the Tenants by registered mail on March 2, 2022. Canada Post indicates the registered mail package was signed for and received by FJ on March 8, 2022. As noted above, service of the NDRP on both Tenants in the same package by registered mail did not comply with section 89(1) of the Act and therefore service of the NDRP was invalid. However, section 88 of the Act states in part:

- 88** All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:
- [...]
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- [...]

As evidence may be served pursuant to section 88, it is unnecessary the evidence be served on each of the Tenants separately. As such, I find the Tenants were served with the Landlord's evidence in accordance with the provisions of section 88 of the Act.

### Issues to be Decided

Is the Landlord entitled to:

- a monetary award for damage arising out of this tenancy?
- retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary award requested?
- recovery of his filing fee for the Application?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The Landlord testified the tenancy commenced on November 1, 2019, on a month-to-month basis, with rent of \$800.00 payable on the 1<sup>st</sup> of each month. The Landlord stated the Tenants were required to pay a security deposit of \$400.00 and a pet damage deposit of \$400.00 by October 15, 2019. The Landlord stated the Tenants paid the security and pet damage deposits and that he is holding the deposits in trust on behalf of the Tenants.

The Landlord testified the Tenants vacated the rental unit on August 31, 2021. The Landlord stated a move-in condition report was performed prior to the Tenants moving into the rental unit on November 1, 2019. The Landlord stated he made arrangements with the Tenants to perform a move-out condition inspection report for the day of the Tenants' move-out on September 1, 2021 but they did not show up and, instead, they took pictures of the rental unit before they left. The Landlord stated he personally performed a move-out inspection of the rental unit on September 1, 2021. The Landlord submitted a copy of the move-in and move-out inspection report on Form RTB-27.

The Landlord testified that, when he inspected the rental unit after the Tenants moved out, he found that the Tenants had not left the rental unit in reasonably clean condition. The Landlord stated the freezer section of the refrigerator and the oven to the stove

were filthy. The Landlord stated the paint on the walls of the rental unit were covered in some type of oily substance. The Landlord also stated there was a dent on the top of the laundry dryer. The Landlord submitted a total of 14 photos showing the condition of the rental unit. The Landlord submitted a text from one of the cleaners who advised that it required three washes with TSP to remove the oily substance embedded in the paint on the walls which required two cleaners a total of 14 hours to complete the cleaning. The Landlord stated he was charged a total of \$560.00 for the two cleaners to clean the rental unit. The Landlord stated he was not seeking compensation for the dent in the dryer, but was only seeking \$560.00 to recover his loss for the cleaning services.

### Analysis

Rule 6.6 Residential Tenancy Branch Rules of Procedure ("RoP") 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. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Based on Rule 6.6, the onus to prove his case, on a balance of probabilities, is on the Landlord.

Sections 7 and 67 of the Act state:

- 7(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.

- 67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

*Residential Tenancy Branch Policy Guideline 16* ("PG 16") addresses the criteria for awarding compensation. PG 16 states in part:

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.

These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the Residential Tenancy Act for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Accordingly, the Landlord must provide sufficient evidence that the four elements set out in PG 16 have been satisfied.

The undisputed testimony of the Landlord was the Tenants failed to leave the rental unit in reasonably clean condition after they vacated the unit. The undisputed testimony of

the Landlord was the Tenants did not attend the move-out condition inspection at the time scheduled. As a result, the Landlord stated he performed the move-out condition inspection himself. The Landlord submitted a copy of the move-in and move-out condition inspection report to corroborate his testimony on the condition of the rental unit before the Tenants moved into the rental unit and the condition of the rental unit after the Tenants vacated the rental unit. The Landlord submitted 14 photos to corroborate his testimony on the condition of the rental unit after the Tenants vacated the rental unit. The undisputed testimony was he paid \$560.00 for two cleaner to clean the rental unit over a 14-hour period. The Landlord submitted evidence showing the calculation of and total amount charged by the cleaners for their cleaning services.

I find the Landlord has provided sufficient evidence to prove he has satisfied the four elements set out in PG 16. As such, I find the Landlord is entitled to the entirety of his claim in the amount of \$560.00. Pursuant to section 67 of the Act, I order the FJ pay \$560.00 to compensate the Landlord for his loss. Pursuant to section 72(2) of the Act, the Landlord may retain \$560.00 from the security and pet damage deposits of \$800.00 in satisfaction of the monetary order.

As the Landlord has been successful in the Application, pursuant to section 72 of the Act, I award the Landlord \$100.00 for the filing fee of the Application. Pursuant to section 72(2) of the Act, I order that the Landlord may retain \$1000.00 from the security and pet damage deposits of \$800.00 to recover the filing fee of the Application.

### Conclusion

I order FJ pay the Landlord \$560.00 to the Landlord to compensate him for his loss.

I order FJ pay the Landlord \$100.00 to the Landlord for the filing fee of the Application.

I order the Landlord retain \$660.00 from the security and pet damage deposits in satisfaction of the monetary orders made above.

The Landlord is ordered to pay the Tenants, **within 15 days of receipt of this decision**, the sum of **\$140.00** calculated as follows:

Description	Amount
Compensation awarded to Landlord	\$560.00
Recovery of Filing Fee of Application	\$100.00
Less Tenant's Security Deposit	-\$800.00
<b>Total</b>	<b>-\$140.00</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: April 20, 2022

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Residential Tenancy Branch