



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNRL-S, FFL

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and both tenants.

Both parties acknowledged receipt of each other's evidence and raised no issues or concerns.

I note the landlord had submitted an Application for Substituted Service to be able to serve hearing documents by email. However, there was no decision on file for that Application. The landlord confirmed that he never received a decision regarding his serving documents by email. As the tenants had received the landlord's email containing all of the hearing documents and evidence, I am satisfied the use of email is an acceptable method of service for these parties.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for compensation for damage to or cleaning of the rental unit and residential property; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord has submitted the following relevant documents:

- A copy of a tenancy agreement signed by the parties on January 23, 2020 for a 13 month and one day fixed term tenancy that began on February 1, 2020 and converted to a month-to-month tenancy on March 2, 2021 for a monthly rent of

\$2,500.00 due on the first of each month with a security deposit of \$1,250.00 and a pet damage deposit of \$1,250.00 paid;

- A copy of an email from the tenants to the landlord dated August 13, 2021, advising the landlord that they will be vacating the rental unit “by the end of the month” as they were in the process of buying their own home;
- A copy of a Notice of Final Opportunity to Schedule a Condition Inspection setting the date of inspection to be September 6, 2021 between 5:00 p.m. and 7:00 p.m.;
- A Condition Inspection Report recording the condition of the rental unit and residential property at the start of the tenancy; and
- Several photographs recording the condition of the property at the end of the tenancy.

The landlord seeks compensation for damage to and cleaning of the rental unit and residential property in the amount of \$2,500.00. In addition, the landlord seeks one month’s rent in the amount of \$2,500.00. The landlord wrote, on their Application, that they make this claim because of the short notice the tenants provided to end the tenancy.

The landlord confirmed he received the tenants’ notice that they would be vacating the property on August 13, 2021 by email and that it stated they would vacate by “the end of the month”.

The tenants submitted that in addition to sending the landlord their notice on August 13, 2021 they had discussed, in March or April 2021, the possibility that they would be buying a house in the near future and that they would be moving out. Their plan when they sent the notice to the landlord was that they would be out of the unit by August 31, 2021 but they actually moved out on September 4, 2021.

The tenants also submitted that there had been some recent plumbing issues that had never been addressed in the rental unit and that they were increasingly concerned about the potential for mould growth. The tenants submitted that this contributed to their reasons to end their tenancy as well.

However, the tenants did not provide any evidence that they had advised the landlord that they thought the landlord was in breach of a material term and that if he did not fix it within a reasonable time, they would end their tenancy.

The landlord submitted that he attempted, over the course of several days, to schedule the move out inspection beginning on August 31, 2021. He testified that he asked to have a time set for September 1, 2021 at 1:00 p.m. but was told that the tenants would call him.

The landlord stated that he showed up at the property for each of the next few days to try and see if he could complete the inspection but each time he did, no one would

answer the door and each time the U-Haul truck was still in the driveway. He stated he connect with the tenant they offered that the landlord could come by at midnight or the following day but if he came the following day they would not be there.

While the tenants stated that according to their call logs the landlord did not call until September 1, 2021 to start scheduling a time for the inspection their versions of the conversations were not that different from the landlord's – with some minor exceptions.

The tenants submitted that they had originally booked the largest truck they could from U-Haul but on the day they picked up it was not available and they had to alter their plans. They were moving to a new community several hundred kilometres away from the rental unit. As such, they had to make multiple, unanticipated, trips to move their belongings which increased the time to make the move and delayed the date they actually had everything moved out.

The tenants agree, for the most part, that the photographs the landlord submitted into evidence are a fair representation of the condition of the rental unit and residential property when the vacated the unit. They did state, however, that one of the pictures of debris along the side of the house was that way when they moved in and that the branches in the backyard were from a neighbour and had been there for over hearing waiting for the landlord to clean up.

The landlord stated that owner of the property completed most of the work to clean and repair the residential property and rental unit on their own or with the help of family or friends. However, the landlord did not provide a break down of the monetary claim for damage and cleaning.

### Analysis

Section 45(1) of the *Act* allows a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,  
and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 45(3) allows that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

As the tenants provided no evidence that they intended to end the tenancy for breach of a material term on the part of the landlord, I find the earliest the tenants could end a

tenancy when providing the landlord with their notice on August 13, 2021 would have been September 30, 2021.

Even if the tenants had provided an “advance warning” that they would be looking for a new place to live, the tenants’ obligations are tied to the date they provide their specific notice advising they are ending the tenancy on a specific date. For example, if they provided written notice to the landlord on May 1, 2021 that they would be vacating the property on August 31, 2021 that would be ok but simply stating they were looking for a new place to live and would be moving out in the future does not constitute a notice to end tenancy.

As such, I find the tenants were obligated to pay rent to the landlord for the month of September 2021.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* stipulates that 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.

As there is limited dispute as to the condition of the residential property and rental unit I find the landlord has established that the tenants failed to comply with their obligations under Section 37 of the *Act* to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

As a result, I find the landlord has established that they have suffered a loss and that the loss results from a violation of the *Act*. However, as the landlord has provided no breakdown of how they determined the value of their claim to be \$2,500.00 I find the landlord has failed to establish the value of that loss, and I cannot award the amount claimed.

However, Residential Tenancy Policy Guideline 16 allows that an arbitrator may also award nominal damages. The Guideline states: “Nominal damages” are a minimal

award. Nominal damages may be awarded where there has been no significant loss or not significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

As such, I award the landlord nominal damages in the amount of \$500.00. Based on the photographic evidence submitted by the landlord and the acknowledgement of the tenants that the evidence is an accurate representation of how they left the property, I am satisfied this is the least amount that should be awarded to the landlord.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3,100.00** comprised of \$2,500.00 rent owed; \$500.00 nominal damages; and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and pet damage deposit held in the amount of \$2,500.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$600.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 04, 2022

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Residential Tenancy Branch