



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the Landlord: MNDCL-S, MNDL-S, FFL  
For the Tenant: MNSDS-DR, FFT

### Introduction

The Landlord filed an Application for Dispute Resolution by direct request on August 3, 2021, seeking compensation for damages caused by the Tenant, as well as for other monetary loss. Additionally, they applied for reimbursement of the Application filing fee. The matter was scheduled to a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 19, 2022.

The Tenant filed their Application by direct request on October 4, 2021, seeking return of the paid security deposit, and reimbursement of the Application filing fee. They applied via direct request method; however, with the Landlord’s Application already in place, that mode of dispute resolution is not available where the Landlord already made a claim concerning this tenancy.

The Residential Tenancy Branch joined the two Applications and the matter was scheduled to a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) for April 19, 2022.

### Preliminary Matter – notification of hearing

The Landlord attended the hearing; however, the Tenant did not attend, and the Landlord advised they did not know about the Tenant’s own Application.

The Landlord provided Notice of Dispute Resolution to each of the two Tenants via registered mail. They provided tracking information for each package to show completion of this activity. From this evidence, I am satisfied that the Landlord advised

the Tenants (hereinafter, the “Tenant”) via registered mail of this hearing and provided the evidence they intend to rely on for this matter.

The Tenant provided notification to the Landlord via registered mail and provided receipts including tracking numbers to show that in their evidence to the Residential Tenancy Branch. The tracking information shows the package sent on October 7, 2021 and arrived to its destination on October 14, 2021. The Tenant included tracking information; however, the address they utilized for this purpose was not written on those labels. Though it appears they provided this information, the address of the Landlord is not shown anywhere in that information to verify the Tenant sent notification of their Application to the Landlord.

Additionally, the Tenant did not attend the hearing after being notified by the Residential Tenancy Branch that the matter was a participatory hearing. The Branch notified the Tenant of their responsibility to notify the Landlord on October 6, 2021 when they contacted the Branch to verify information on their Application. Because the Tenant did not attend to verify service to the Landlord, I dismiss their Application with leave to reapply.

Additionally, Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to re-apply. For this reason and in the alternative, I dismiss the Tenant’s Application, with leave to reapply. I consider the dispensation of the security deposit in relation to the Landlord’s claim for damages and other monetary loss. I dismiss the Tenant’s claim to the Application filing fee, without leave to reapply.

### Issues to be Decided

Is the Landlord entitled to compensation for damage caused by the Tenant, and/or other monetary loss, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

### Background and Evidence

The parties entered into a tenancy agreement on August 13, 2020 as shown in the Landlord's evidence. This set the start of the tenancy for September 1, 2020, for the total term of 12 months to August 31, 2021. The Tenant paid a monthly rent of \$4,300 on the first of each month. They paid a security deposit of \$2,150.

The tenancy agreement in the Landlord's evidence on page 6 sets out a liquidated damages clause. This is applicable, as stated in the agreement, in the situation where the Tenant ends the fixed term before the end of the original term. The amount of "half a month's rent plus GST will be paid by the Tenant to the Landlord as Liquidated Damages". As stated in the agreement, this is "not as a penalty to cover the administrative costs or re-renting the rental unit."

In the hearing the Landlord presented that the Tenant notified them on August 27 that they chose to end the tenancy with the end-of-tenancy date being August 31. The Tenant was explicit that they could not continue the agreement on a month-to-month basis in their email to the Landlord on August 27. The Landlord made sure to inform the Tenant that their notice was not a suitable timeframe for ending the tenancy in these circumstances. For this purpose, the Landlord claims one-half months' rent – i.e., \$2,150 – for liquidated damages where the Tenant ended with insufficient notice to the Landlord on August 27, ending the tenancy for August 31.

On September 1 the Landlord conducted a move-out inspection meeting together with the Tenant. The Condition Inspection Report in the Landlord's evidence shows the Tenant's signed agreement to the condition of the rental unit. The summary statement on damage reads: "The two kitchens greasy. Not cleaned. Dusty @ bedrooms. 8 bulbs out. fix the toilet paper hanger and towel hanger. scratched floor @ living room and office." The Tenant did not provide a forwarding address to the Landlord at that time and no address appears in that designated space on the Condition Inspection Report. At that time, the Tenant stated to the Landlord they agreed with the condition and were waiting for a cost amount from the Landlord in order to utilize the security deposit for that purpose.

In their evidence the Landlord provided a copy of a document wherein the Tenant advised the Landlord of their forwarding address. This was on September 22, 2021. The Landlord noted they did not acquire new tenants for the rental unit in the month following, with the Landlord's plan to sell the rental unit as was made known to the Tenant in April 2021.

In their evidence the Landlord provided two photos showing scratches to the hardwood floors in the rental unit. These scratches were noted specifically on the Condition Inspection Report for the living room and dining room. The Landlord provided an estimated cost of floor repair, with their own property management company signing the document for that purpose, providing the amount of \$500.

The Landlord provided three images showing detail in the rental unit, showing the need for cleaning. The Landlord provided a copy of a receipt dated September 25, 2021 showing “house cleaning” for \$800, adding 5% tax for the total of \$840. This is from a cleaning firm in the same locality as the rental unit.

### Analysis

To set the foundation for each parties’ basic rights and obligations under the *Act*, I find a tenancy agreement was in place between the parties.

In the *Act*, a tenant has the ability to end a tenancy only within strict timelines, as set out in s. 45. The subsection (2) provides that a tenant may end fixed-term agreement on a date that is: not earlier than one month after the date the Landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and is the day before the rent payment date. This precise language is not reproduced or otherwise summarized in the tenancy agreement which is binding on the parties.

Instead, the agreement has a liquidated damages provision that gives a remedy to the Landlord in this situation. I note in this situation the Landlord was selling the property, as they described in the hearing. The clause in question provides for “the administrative costs [of] re-renting the unit.” I find as fact the Landlord was not re-renting the unit, and the Landlord stated this plainly in the hearing. For this reason, I find the liquidated damages clause does not apply, with the Landlord here seeking to apply that instead as a penalty. In sum, there is no cost to re-rent the property and the Landlord here did not present the urgent need to re-rent the property; therefore, I find the liquidated damages clause does not apply, or else it applies only arbitrarily as a penalty for the Tenant’s late notification, which is not the intended purpose of a liquidated damages clause. I grant no award to the Landlord for this piece of their claim.

Concerning the condition of the unit at the end of tenancy, s. 37 specifies that a tenant must “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.”

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

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.

Regarding the scratches to the floor, I find the Landlord provided insufficient evidence of both the damage and the proper cost of remedying that situation. The dollar value of \$500 appears to originate from the property management company itself, and there is no evidence showing the Landlord consulted with a floor repair or restoration firm on an estimate for work to the floor. For this reason, I dismiss the Landlord’s claim to this amount for damages.

Additionally, the Landlord did not provide a detailed account of the necessary cleaning. Given the pending sale, it is not known whether the cleaning was in line with the seller’s desire for clean showing of the rental unit. I understand basically the unit was not fully clean – as shown in the detail of pictures provided by the Landlord; however, I am not satisfied that the evidence warrants the full amount of \$840 as charged by the Landlord. This is claimed without either fulsome evidence showing abundant detail, or a breakdown of all necessary cleaning being accomplished. I concede on a certain amount of cleaning as agreed to by the Tenant on the Condition Inspection Report; however, in line with the amount of evidence the Landlord presents I grant only the amount of \$250 for this purpose.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by a landlord. The Landlord here has established a claim of \$250. After

setting off the security deposit of \$2,150, there is a balance of \$1,900. I am authorizing the Landlord to keep \$250 and order the return of the balance to the Tenant. Though the Tenant did not pursue their claim for the return of the deposit, the Landlord has not proven their claim to all of that deposit, and they remain legally obligated to return the balance to the Tenant here.

The Landlord was not successful for the majority of their claim; therefore, I find they are not entitled to recover the Application filing fee.

### Conclusion

Pursuant to s.72 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$1,900. I provide the Tenant with this Monetary Order in the above terms, and they must serve it to the Landlord as soon as possible. Should the Landlord fail to comply with this Order, the Tenant may file the Order in the Small Claims Division of the Provincial Court where it may 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 s. 9.1(1) of the *Act*.

Dated: April 20, 2022

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Residential Tenancy Branch