



# 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 landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open for the duration of the hearing in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlords attended the hearing and were 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 Hearing. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

The landlords were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlords testified that they are not recording this dispute resolution 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."

The landlords confirmed their email address for service of this decision and order.

The landlords testified that the tenant did not provide her forwarding address at the end of the tenancy, but the landlord's son provided it to them via Facebook messenger on June 20, 2021. The Facebook messenger confirmation stating same was entered into evidence. The landlords testified that in November of 2021 they attended at the subject rental property and the owner confirmed that the tenant resided at the subject rental property from June 1, 2021 to October 4, 2021. An email stating same from the owner was entered into evidence.

Based on the Facebook message exchange and the above cited email, I find that the forwarding address provided by the tenant's son on June 20, 2021 was the address at which the tenant resided from June 1, 2021 to October 4, 2021.

The landlords testified that they served the tenant, at the above-described address, with their application for dispute resolution and evidence via registered mail on September 27, 2021. A registered mail receipt stating same was entered into evidence. I find that the tenant was deemed served with the landlords' application for dispute resolution and evidence on October 2, 2021, five days after it was mailed, in accordance with sections 88, 89 and 90 of the *Act*.

### **Issues to be Decided**

1. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Are the landlords entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Are the landlords entitled to retain the tenant's security and pet damage deposits, pursuant to section 38 of the *Act*?
4. Are the landlords entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

## **Background and Evidence**

While I have turned my mind to the documentary evidence and the testimony of both landlords, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The landlords testified that the tenant moved in on February 15, 2020 and that they learned of the tenant's abandonment of the subject rental property on April 1, 2021. The landlords entered into evidence a tenancy agreement signed by both parties which states that monthly rent for this periodic tenancy, in the amount of \$750.00, was payable on the first day of each month. The landlords' application for dispute resolution states that the tenant paid a security deposit in the amount of \$325.00 and a pet damage deposit in the amount of \$325.00. The signed tenancy agreement states that the tenant paid a security deposit of \$375.00 and no pet damage deposit. Testimony clarifying this discrepancy was not provided.

The landlords testified that the tenant failed to pay March 2021's rent on March 1, 2021 when it was due and did not return any of their attempts at communication thereafter. The landlords testified that in March of 2021 they served the tenant with 24 hours Notice of Inspection for an inspection on April 1, 2021. The landlords testified that when they attended at the subject rental property for the inspection, they found the subject rental property was abandoned by the tenant and was left in deplorable condition.

The landlords testified that they did not complete move in and out condition inspection reports because they were not aware that they were supposed to. The landlords entered into evidence a video (the "before video") of the subject rental property which they testified was taken approximately two months before the tenant moved in. The landlords testified that the condition of the subject rental property seen in the video was the same as when the tenant moved in, except the flooring was replaced in that time and was new at the start of the tenant's tenancy.

The landlords testified that on April 14, 2021, they removed the tenant's abandoned belongings and garbage from the subject rental property and thereafter spent a considerable amount of time cleaning the subject rental property and returning it to a habitable state.

The landlords testified that tenant damaged the subject rental property and that they are seeking the following compensation:

Item	Amount
Repair bathroom	\$2,500.00
Repair wiring	\$362.25
Clean	\$1,400.00
Repair paint	\$300.00
Painting supplies	\$63.27
Replace door locks	\$47.13
Fuel to and from landlord property to subject rental property	\$248.25
Dump fees	\$26.20
March and April rent	\$1,500.00

#### Repair bathroom

The landlords testified that the bathroom was in good working order and was undamaged at the start of this tenancy. No damage to the bathroom can be seen in the before video. The landlords entered into evidence photographs they testified were taken after the tenant abandoned the subject rental property showing that tiles in the bathtub and behind the toilet were removed and a patch was poorly caulked in place of the removed tiles. The landlords testified that the plumber from whom they obtained the quote informed them that the plumbing behind the patch job would also need to be repaired.

The landlords testified that they had a quote to repair the holes and plumbing alterations made by the tenants. A quote for \$2,500.00 was entered into evidence. The landlords testified that the repair work has not been completed but will be once the current tenants move out or sooner if the tenant's patch job and plumbing alterations fail.

#### Repair wiring

The landlords testified that the tenant removed the landlord's light fixture from the bathroom and installed her own light, but in doing so cut wires. The landlords testified that the wiring job she did was a fire hazard. The landlords testified that she left the

landlord's light fixture at the subject rental property, and they had an electrician re-install the original light fixture and correct the wiring problems. The landlords entered into evidence a receipt for same in the amount of \$362.25.

The light fixture cannot be seen in the before video. The landlords entered into evidence a photograph of the light fixture they testified the tenant installed; wires can be seen emerging from behind the fixture.

### Clean

The landlords testified that the subject rental property was clean at the start of this tenancy and was filthy at the end of the tenancy. The landlords testified that the subject rental property was left full of cigarettes, drug paraphernalia, feces, and mouldy food. Photographs of same were entered into evidence. The before video shows that the subject rental property is clean.

The landlords testified that they spent 56 hours cleaning the subject rental property and are seeking \$25.00 per hour for that time, for a total of \$1,400.00.

### Repair paint job

The landlords testified that during the tenancy, the tenant sought permission to paint the subject rental property. The landlords testified that the tenant was granted permission but that her colour selection had to be approved by the landlords. The landlords testified that the tenant did not submit colours for approval and went ahead and painted the walls. The landlords testified that the paint job completed by the tenant was adequate but that since completing the paint job, the tenant splattered white paint over sections of the coloured walls.

The landlords testified that the sections of the walls that were splattered with white paint had to be re-painted. The landlords testified that the tenant abandoned the same paint she used to paint the walls at the subject rental property, and to save costs, the landlords testified that they used the tenant's abandoned paint to repair the walls. The landlords testified that they spent 12 hours repairing the tenant's paint job and are seeking \$25.00 per hour for this work for a total of \$300.00.

The landlords testified that they had to purchase painting supplies to do the above work. A receipt for same in the amount of \$63.27 was entered into evidence. The landlords are claiming this amount to be reimbursed by the tenant.

#### Replace door locks

The landlords testified that the tenant did not return the keys to the subject rental property and they were worried about her having unfettered access to the subject rental property and so they had the locks changed. The landlords entered into evidence a receipt in the amount of \$47.13. The landlords are claiming this amount to be reimbursed by the tenant.

#### Fuel to and from landlord property to subject rental property

The landlords testified that they served the tenant with a 24 hour inspection notice because the tenant stopped paying rent and communicating with the landlords. The landlords testified that they do not live in the same city as the subject rental property and had to drive to the subject rental city to complete the inspection of the subject rental property. The landlords are seeking the tenant to reimburse them for their gas to and from the subject rental city for the purpose of the inspection that occurred on April 1, 2021.

The landlords entered into evidence a gas receipt dated March 29, 2021 for \$62.15, a gas receipt dated March 30, 2021 for \$46.44 and a gas receipt dated April 1, 2021 for \$62.34. The landlords testified that they came to the subject rental city a couple of days before the April 1, 2021 inspection.

The landlords are also seeking the tenant to reimburse them for their gas to and from the subject rental city for the purpose of attending at the subject rental property to clean it on April 14, 2021. The landlords entered into evidence a receipt dated April 14, 2021 in the amount of \$77.32.

### Dump Fees

The landlords testified that some items left at the subject rental property were non-salvageable. The landlord entered into evidence a receipt for the dump in the amount of \$26.20. The landlords' application for dispute resolution seeks the tenant to reimburse the landlords for this expense.

### March and April rent

The landlords testified that the tenant did not pay rent for March or April 2021 and did not provide the landlords with a notice to end tenancy. The landlords testified that they only learned of the tenant's abandonment on April 1, 2021.

### Analysis

Section 67 of the *Act* states:

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.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

#### Repair bathroom

Based on the landlords' undisputed testimony and the photographs taken after the tenant moved out, I find that the bathroom was in good working order at the start of this tenancy and the tenant damaged the tiles and plumbing in the bathtub and behind the toilet, contrary to section 37(2)(a) of the *Act*.

I find that the tenant is responsible for the cost to repair the damages she caused. I find that the landlords have provide the value of their loss stemming from the tenant's breach of the *Act*, in the amount of \$2,500.00, as evidenced by the quote provided by the landlords. I find that no mitigation issues are present. I award the landlords \$2,500.00

#### Repair wiring

Based on the landlords' undisputed testimony and the photographs taken after the tenant moved out, I find that the tenant removed the landlord's light fixture and did unauthorized electrical work. I find that the unauthorized electrical work damaged the wiring in the bathroom, contrary to section 37(2)(a) of the *Act*.

I find that the tenant is responsible for the cost to repair the damage she caused and to reinstall the light she removed. I find that the landlords have provide the value of their loss stemming from the tenant's breach of the *Act*, in the amount of \$362.25, as evidenced by the receipt provided by the landlords. I find that no mitigation issues are present. I award the landlords \$362.25.



### Clean

Based on the landlords' undisputed testimony, the before video and the photographs taken after the tenant moved out, I find that the subject rental property was left in a deplorable filthy condition, contrary to section 37(2)(a) of the *Act*.

I accept the landlords' undisputed testimony that it took them 56 hours to clean the subject rental property. I find that the rate of \$25.00 per hour is reasonable. I award the landlord \$1,400.00 for cleaning the subject rental property. I find that no mitigation issues are present.

### Repair paint job

I accept the landlords' undisputed testimony that the tenant painted the subject rental property during the tenancy and that the paint job was adequate. I accept the landlords' undisputed testimony, supported by photographic evidence, that this paint job was later damaged by the splattering of white paint, contrary to section 37(2)(a) of the *Act*.

I accept the landlords' undisputed testimony that it took them 12 hours to repair the paint at subject rental property. I find that the rate of \$25.00 per hour is reasonable. I award the landlord \$300.00 for repairing the paint at the subject rental property. I find that no mitigation issues are present.

### Replace door locks

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

- (2)When a tenant vacates a rental unit, the tenant must
  - (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.

I accept the landlords' undisputed testimony that the tenant did not return the keys to the subject rental property, contrary to section 37(2)(b) of the *Act*. I find that given the nature of the end of the tenancy, it was reasonable for the landlords to replace the locks. I find that the landlords have proved the value of the loss suffered by the above

breach of the *Act*, in the amount of \$47.13, as evidence by the receipt provided. I find that no mitigation issues are present. I award the landlords \$47.13.

#### Fuel to and from landlord property to subject rental property

I find that the fuel spent to conduct the inspection of the subject rental property on April 1, 2021 is not recoverable by the landlords because it was spent in the usual course of the landlords duties as landlords (conducting an inspection). The landlords are not entitled to recover the costs of being a landlord.

I find that the requirement of the landlords to return to clean the subject rental property on April 14, 2021, after its was left in a condition that breached section 37(2)(a) of the *Act*, is recoverable because it directly stemmed from the above breach of the *Act*. I award the landlords the \$77.32, the amount stated on the April 14, 2021 receipt.

#### Dump Fees

Based on the landlords' undisputed testimony and the photographs entered into evidence, I find that the tenant left a substantial amount of garbage at the subject rental property, contrary to section 37(2)(a) of the *Act*. I find that the landlords have proved the value of the loss suffered by this breach in the amount of \$26.20, as evidenced by the dump receipt. I find that no mitigation issues are present. I award the landlords \$26.20, the cost of taking the tenant's garbage to the dump.

#### March and April rent

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*.

Section 45(1) of the *Act* states that a tenant may 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.

Residential Tenancy Policy Guideline #3 states:

Where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement (section 7(1) of the RTA and the MHPTA). This can include the unpaid rent to the date the tenancy agreement ended and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement.

Based on the undisputed testimony of the landlords, I find that the tenant did not provide a notice to end tenancy as required by section 45(1) of the *Act* and that the tenancy was still in effect for the month of March 2021. I find that the tenant was obligated to pay rent, pursuant to section 26 of the *Act* on March 1, 2021, and failed to do so. Pursuant to sections 26 and 67 of the *Act*, I award the landlords \$750.00 for March 2021's rent.

I find that the tenant's failure to comply with section 45(1) of the *Act* resulted in lost income in the amount of \$750.00 for the month of April 2021. I award the landlords \$750.00 for April 2021's rent.

### Security Deposit

The landlords' application for dispute resolution states that the tenant paid a security deposit in the amount of \$325.00 and a pet damage deposit in the amount of \$325.00. The signed tenancy agreement states that the tenant paid a security deposit of \$375.00 and no pet damage deposit. Testimony clarifying this discrepancy was not provided.

I find that the landlords have not proved the amount of the security deposit paid by the tenant, I therefore decline to make any order pertaining to the tenant's security deposit. I note that since the tenant has not provided her forwarding address in writing to the landlords, the landlords are not as of yet, required to return the security and or pet damage deposits to the tenant.

I dismiss the landlords' application to retain the tenant's security and or pet damage deposit, with leave to reapply.

As the landlords were successful in the majority of this application for dispute resolution, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

### Conclusion

I issue a Monetary Order to the landlords under the following terms:

Item	Amount
Repair bathroom	\$2,500.00
Repair wiring	\$362.25
Clean	\$1,400.00
Repair paint job	\$300.00
Painting supplies	\$63.27
Replace door locks	\$47.13
Fuel to and from landlord property to subject rental property	\$77.32
Dump fees	\$26.20
March and April rent	\$1,500.00
Filing fee	\$100.00
<b>Total</b>	<b>\$6,376.17</b>

The landlords are provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. 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: May 11, 2022

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Residential Tenancy Branch