



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NOORT INVESTMENTS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, MNRL, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 2:05 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. The landlord, represented by property manager LM (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 Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands the parties are not allowed to record this 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 \$5,000.00.”

The landlord stated the tenant texted him the forwarding address on October 27, 2021. The landlord served the notice of hearing and the evidence (the materials) to the tenant’s forwarding address on November 19, 2021. The tracking number and the forwarding address are recorded on the cover page of this decision.

Based on the landlord's convincing testimony and the tracking number, I find the landlord served the materials to the tenant on November 19, 2021, in accordance with section 89(1)(c) of the Act.

Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on November 24, 2021, in accordance with section 90(a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

### Issues to be Decided

Is the landlord entitled to:

1. monetary order for unpaid rent?
2. a monetary order for loss?
3. an authorization to retain the deposit?
4. an authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord testified the parties entered into a fixed term tenancy from July 01, 2021 to June 30, 2022. Monthly rent of \$2,150.00 was due on the first day of the month. At the outset of the tenancy a deposit of \$1,075.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence. It states the tenant cannot smoke in the rental building, including the rental unit (clause 44).

The landlord said the tenant abandoned the rental unit and texted the landlord on October 27, 2021. The landlord read the text messages during the hearing:

Tenant: I will not be returning. I will send you my apartment key.

Landlord: We did not get notice from you that you were leaving. Also, we have to do a walk through together to make sure it's clean. Also, because you did not give 30 day notice you will be responsible for next month's rent, you know that, right?

Tenant: Yes. My wife is sick in the hospital.

Landlord: I am sorry to hear that. I wish it turns out the best.

Tenant: Thank you.

Landlord: You have four pairs of jeans. Do you want me to send them to you?

Tenant: My final bills and jeans to [forwarding address recorded on the cover page]

The landlord texted the tenant on November 01 and 02, 2021 inquiring about rent but the tenant did not reply and did not pay rent due on November 01 and December 01, 2021.

The landlord conducted the move out inspection alone, as the tenant abandoned the rental unit. The landlord submitted the condition inspection report (the report).

The landlord is claiming cleaning expenses in the amount of \$300.00, as the tenant did not clean the 827 square feet, 2-bedroom rental unit. The landlord stated the tenant did not clean the kitchen, the bathroom and the floor. The tenant smoked in the rental unit and left cigarette butts throughout the rental unit. The landlord submitted three photographs showing cigarette butts on the floor of the rental unit. The report states: "cigarette burns on chest of drawers + coffee table + wash dishes. All appliances dirty. Stove, fridge, coffee maker, microwave and dishwasher." The report also states that all the rooms of the rental unit were dirty when the tenancy ended. The landlord submitted an invoice into evidence for 10 hours of cleaning at the hourly rate of \$30.00.

The landlord is claiming furniture replacement expenses in the amount of \$1,679.98, as the tenant damaged a dresser and a coffee table. The landlord submitted three photographs showing cigarette burns on these two pieces of furniture, which were new when the tenancy started. The landlord could not repair the pieces of furniture and ordered new ones. The landlord submitted the estimate for the furniture in the amount claimed.

The landlord is claiming for loss of rental income in the amount of \$4,300.00 for rent due on November 01 and December 01, 2021. The application states:

I want to recover the money for the unpaid rent. Amount requested: \$4,300.00.

Description: [tenant] texted me on Oct 27, 2021 saying that he was leaving and not coming back. Since he didn't give 30 day notice, he owes us for Nov. rent and we are

only requesting a penalty of 1 month rent for breaking his lease and then he's no longer in obligation to us for any other loss revenue.

The monetary order worksheet submitted by the landlord states: "Tenancy agreement. Owed rent minus deposit. \$3,200.00". The landlord testified he claimed for monthly rent of \$2,150.00 for November and December 2021 and subtracted the deposit of \$1,075.00. The landlord said the correct amount he claimed was \$4,300.00 minus the deposit of \$1,075.00, but he mistakenly mentioned \$3,200.00 in the monetary order worksheet.

The landlord affirmed he started advertising the rental unit on November 10, 2021 and signed a new tenancy agreement on January 14, 2022 for a tenancy starting on February 01, 2022. The landlord asked for a monthly rent of \$2,000.00 and was able to re-rent the unit for the asking price. The landlord did not start advertising the unit earlier because he needed to replace the damaged furniture and clean the unit.

The landlord did not claim for liquidated damages.

### Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(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.

Residential Tenancy Branch (RTB) Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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.

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 the case is on the person making the claim.

### Cleaning

Section 37(2) of the Act states:

Leaving the rental unit at the end of a tenancy

37(2) 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

RTB Policy Guideline 1 states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

Based on the landlord's convincing undisputed testimony, the report and the photographs, I find the tenant failed to comply with section 37(2) of the Act by not cleaning the rental unit when the tenancy ended, and the landlord suffered a loss. Based on the invoice and the landlord's convincing undisputed testimony, I find the landlord suffered a loss in the amount of \$300.00.

Thus, I award the landlord \$300.00.

### Furniture

Section 32(3) of the Act states: “A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant”.

Based on the landlord’s convincing undisputed testimony, the report and the photographs, I find the tenant failed to comply with section 32(3) of the Act by not replacing or repairing the damages caused to the dresser and the coffee table.

Based on the estimate and the landlord’s convincing undisputed testimony, I find the landlord suffered a loss in the amount of \$1,679.98.

Thus, I award the landlord \$1,679.98.

Loss of rental income

Based on the landlord’s convincing testimony and the application, I find the landlord claimed loss of rental income for November and December 2021 in the total amount of \$4,300.00.

Based on the landlord’s convincing testimony, I find the tenant was aware the tenancy was for a fixed term ending on June 30, 2022 and the tenant ended the tenancy early on October 27, 2021, contrary to section 45(2)(b) of the Act:

- (2)A tenant may end a fixed term 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,
  - (b)is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and**
  - (c)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.
- (3)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.

(emphasis added)

I find that due to the tenant’s failure to pay rent until the end of the fixed term tenancy agreement on June 30, 2022, the landlord incurred a loss of rental income from November 01, 2021 to January 31, 2022.

RTB Policy Guideline 3 sets conditions for loss of rental income claims. It states:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

[...]

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

Further to that, RTB Policy Guideline 5 states:

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
2. re-rent the unit as soon as possible.

For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.

If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied.

Based on the landlord's uncontested testimony, I find the landlord acted to minimize his losses by advertising the rental unit for a monthly rent of \$2,000.00 instead of \$2,150.00 since November 10, 2021. However, per section 7(2) of the Act and RTB Policy Guidelines 3, 5 and 16, the landlord should have advertised the rental unit as soon as possible. I find the landlord did not minimize his losses from November 01 to 09, 2021, as the landlord only started advertising the rental unit on November 10, 2021 and the landlord was aware that the tenant moved out on October 27, 2021. The landlord did

not explain why he could not advertise the rental unit and clean and repair the furniture at the same time.

Thus, I award the landlord loss of rental income from November 10 to 30, 2021 (\$2,150.00 / 30 days x 20 days = \$1,433.33) and December 01 to 31, 2021 (\$2,150.00). I award the landlord the total amount of \$3,583.33 for loss of rental income.

#### Filing fee and summary

As the landlord was successful in this application, the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, the monetary amount or cost awarded to a landlord may be deducted from the deposits held by the landlord. The landlord is authorized to retain the \$1,075.00 deposit to offset the monetary award.

In summary:

<b>Expenses</b>	<b>\$</b>
Cleaning	300.00
Furniture	1,679.38
Loss of rental income	3,583.33
Filing fee	100.00
Subtotal	5,662.71
Minus deposit	1,075.00
<b>Total monetary award</b>	<b>4,587.71</b>

#### Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain the \$1,075.00 deposit and grant the landlord a monetary order in the amount of \$4,587.71.

The landlord is provided with this order in the above terms and the tenant must be served with this order. 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: June 21, 2022