



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PTR Development Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **MNDL-S, MNRL-S, MNDCL-S**

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damages and loss pursuant to section 67; and
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The corporate landlord was represented by their agent (the "landlord") and property manager who were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served each of the tenants with the notice of hearing and evidence by registered mail sent to the forwarding address provided by the tenants on or about January 28, 2022. The landlord submitted valid Canada Post tracking receipts as evidence of service. Based on the evidence I find that the tenants are each deemed served with the landlord's materials on February 2, 2022, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*. In accordance with Residential Tenancy Policy Guideline the failure of a party to pick up materials sent by registered mail does not rebut the deeming provisions of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed? Are they entitled to retain the deposit for this tenancy?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The landlord gave undisputed evidence on the following facts. This tenancy began in December 2020 and ended in November 2021. The monthly rent was \$2,720.00 payable on the first of each month. A security deposit of \$1,360.00 was paid at the start of the tenancy and is still held by the landlord.

The tenants failed to pay rent for the month of November 2021 and the landlords were issued an Order under the file number on the first page of this decision for recovery of the arrear.

The landlord found that the rental unit, at the end of the tenancy, required considerable cleaning, work, garbage disposal, repairs and replacement of fixtures in order to restore to its pre-tenancy condition. The landlord submitted into evidence the condition inspection report prepared with the tenants at the start and end of the tenancy and numerous photographs, invoices and receipts, written submissions detailing the state of the suite and correspondence with the tenants.

The landlord submits that the total amount of their losses to restore the rental unit is \$9,729.67. The landlord also seeks payment of outstanding utilities for the property that was not paid by the tenants in the amount of \$194.21 and to recover their filing fees for the present application.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the

agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Based on the undisputed evidence of the landlord I am satisfied that the landlord has incurred a loss due to the breach on the part of the tenants. I am satisfied, on a balance of probabilities, from the preponderance of evidence which include the condition inspection report, multiple photographs, invoices and receipts and the undisputed testimony of the landlord that the rental unit was in a state that is far beyond what would reasonably be expected from wear and tear during a tenancy of this short duration. I am satisfied with the undisputed evidence that the rental unit required a considerable amount of work on the part of the landlord at great expense to restore to its pre-tenancy condition. Based on the description of the work done in the invoices and receipts I am satisfied that the work was reasonable and commensurate with restoring the rental unit rather than improvements or renovations. I therefore find that the landlord is entitled to a monetary award in the amount claimed of \$9,729.67.

I find, pursuant to the signed tenancy agreement, that the utilities were not included in the monthly rent for this tenancy. I am satisfied with the documentary evidence showing the outstanding utility bill for this address that the total arrear is \$194.21. I am satisfied with the undisputed evidence of the landlord that they paid this amount to bring the utility account for the address up to date. I therefore issue a monetary award in that amount in the landlord's favour.

As the landlord was successful in their application they are also entitled to recover their filing fee from the tenants in accordance with sections 67 and 72 of the *Act*.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$8,663.88, representing the damages and loss, unpaid utilities and recovery of filing fees and authorizing the landlord to retain the deposit for this tenancy. The tenants must be served with this Order as soon as possible. Should the tenants 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: July 11, 2022

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Residential Tenancy Branch