



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and was given a full opportunity to provide affirmed testimony and present evidence. No issues were raised with respect to the service of the application and evidence submissions on file.

The tenant's common law wife L.T. attended on his behalf. L.T. stated she had written authorization from the tenant to represent him and this information was submitted in a previous file. Although I did not have the written authorization for this current file, L.T. was permitted to represent the tenant and the landlord had no objection to this as well.

### Issues

Is the landlord entitled to a monetary award for damage and/or loss?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The tenancy for this basement unit began on April 1, 2018, with a previous owner and ended on July 16, 2021, under the current owners. The monthly rent was \$1300.00 and the tenant paid a security deposit of \$650.00 at the start of the tenancy which the current landlord holds.

The tenancy was ended after the landlord obtained an order of possession in a decision dated June 29, 2021. On July 8, 2021, the tenant's advocate filed a Review Consideration application on behalf of the tenant and on July 13, 2021, a decision was issued dismissing the review application.

The landlord testified that the tenant and his advocate failed to vacate even after being served with the order of possession and the review application being dismissed. The landlord obtained a writ of possession and on July 16, 2021 the court appointed bailiffs attended and physically removed the tenant's advocate and the tenant's belongings. The tenant himself was not present when the bailiffs attended.

The landlord submitted a "monetary order worksheet" which provides a detailed breakdown of the landlord's claims totaling \$5368.84. The landlord testified that the rental unit was left in an extremely unsanitary condition and full of garbage. The landlord submitted various pictures of the rental unit at the end of the tenancy as evidence. The landlord is claiming costs related to junk removal, cleaning, pest control and the bailiff fees. Invoices for the junk removal, cleaning costs, pest control and bailiff fees were submitted in support.

L.T. was very emotional throughout the hearing and most of her testimony was irrelevant and related to the previous decision and review application. L.T. testified that she did not know the bailiff was coming and that she couldn't do any cleaning.

In reply, the landlord testified that he only took the steps to obtain a writ after obtaining advice from an Information Officer and his lawyer. The landlord submits he did not take any action until the tenant's review application was dismissed. The landlord testified that the order of possession was posted to the tenant's door and he provided the courts with an affidavit to that effect.

### Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

I find the landlord has provided sufficient evidence in support of the claimed damages and loss. I find the landlord had no recourse but to obtain a writ of possession after the tenant and L.T. failed to vacate the rental unit as per the order of possession granted to the landlord on June 29, 2021. The landlord waited until the review process was complete before obtaining a writ of possession. On July 14, 2021, a copy of the Review Consideration Decision was sent to the e-mail address provided by L.T. in her review application. The bailiffs attended on July 16, 2021 and the tenant had still not vacated.

The picture evidence submitted by the landlord support the landlord's claim that the rental unit was left in an unsanitary condition and full of garbage. I find that the landlord has established the existence of the damage or loss as claimed and that it occurred due to the actions or neglect of the tenant. The landlord has also submitted invoices in support of the actual amounts required to compensate for the loss of junk removal, cleaning, pest control and the bailiff fees.

I find the landlord has suffered a loss as claimed in the amount of \$5,268.84.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$5,368.84.

The landlord continues to hold a security deposit and pet deposit in the amount of \$650.00. I allow the landlord to retain the security deposit and pet deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$4,718.84.

Conclusion

I grant the landlord a Monetary Order in the amount of \$4,718.84. 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: July 25, 2022

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Residential Tenancy Branch