



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding J. D. NELSON & ASSOC. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **LL: MNDL-S, MNDCL-S, FFL**  
                                 **TT: MNSDB-DR, FFT**

### **Introduction**

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “*Act*”).

The corporate landlord sought:

- a monetary order for damages and loss pursuant to section 67;
- authorization to retain all or a portion of the tenants’ security and pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants named the personal landlord and sought:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security and pet damage deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The personal landlord confirmed they were also the agent for the corporate landlord.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is either party entitled to the relief sought?

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 parties agree on the following facts. This tenancy began on February 1, 2021 and ended November 30, 2021. Monthly rent was \$1,850.00 payable on the first of each month. Pursuant to the signed tenancy agreement the tenants are also required to pay utilities for the tenancy. A security deposit of \$925.00 and pet damage deposit of \$925.00 were collected at the start of the tenancy. The landlord has returned \$635.02 of the deposits and retains the balance of \$1,214.98.

The parties prepared a condition inspection report at the start of the tenancy and at the end. A copy of the inspection report was submitted into evidence. The parties agree that the tenants failed to provide their full forwarding address on the move-out report of November 30, 2021. The tenants first provided their correct forwarding address on January 7, 2022. The landlord filed their present application for authorization to retain the deposit on January 17, 2022. The landlord subsequently returned to the tenants \$635.02 of the deposits which the tenants confirmed has been received.

The parties agree that there was a utility arrears of \$400.56 for this tenancy and the amount is owing and payable.

The landlord seeks a monetary award of \$814.42 for various repairs, cleaning, work and replacement of fixtures done after the end of the tenancy. The landlord cited the signed inspection report which notes issues including; crack in sink, fan repair, holes in wall, missing lightbulb and blind replacement.

The tenants submit that they feel the amount claimed by the landlord for the repairs to the deficiencies noted on the report are excessive and the report does not accurately represent the condition of the suite.

### Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In the present case I accept the undisputed evidence of the parties that the tenants failed to provide a full and correct forwarding address when the tenancy ended and the address was first provided on January 7, 2022. The landlord filed their application for dispute resolution on January 17, 2022, within the 15 days provided under the *Act*. I therefore find the landlord was within the statutory limit to file their application.

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.

As the parties agree that pursuant to the tenancy agreement the tenants were obligated to pay the utilities and there is a utility arrear of \$400.56, I grant the landlord a monetary award in that amount.

Pursuant to section 21 of the *Residential Tenancy Regulations* a condition inspection report completed in accordance with the Act and regulations is evidence of the state of the rental unit unless there is a preponderance of evidence to the contrary.

I find the tenants' testimony disputing the condition inspection report which they signed to be insufficient to find that the report is inaccurate or not evidence of the condition of the suite. Based on the undisputed testimony of the parties, I find the report was signed

by the parties in accordance with the Act and regulations and is sufficient evidence of the state of repairs of the rental unit.

I am satisfied with the landlord's evidence that the rental unit required some work to be done and they incurred costs to restore the suite to its pre-tenancy condition. I find the invoices and receipts submitted to demonstrate that the work was reasonable, commensurate with the damage noted on the inspection reports and were strictly for restoring the rental unit rather than improvements. I accept the evidence of the landlord that the cost of the work is \$814.42 and issue a monetary award in that amount accordingly.

As the landlord was successful in their application they are also entitled to recover their filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the balance of \$1,214.98 of the tenants' security and pet damage deposit in partial satisfaction of the monetary award issued in the landlord's favour

### Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$100.00. 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: August 29, 2022

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Residential Tenancy Branch