



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

On December 16, 2021, the Landlords applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Landlord B.K. attended the hearing; however, the Tenant did not attend the hearing at any point during the 48-minute teleconference. At the outset of the hearing, I informed the Landlord that recording of the hearing was prohibited and he was reminded to refrain from doing so. As well, he provided a solemn affirmation.

He advised that the Notice of Hearing and evidence package was served to the Tenant by registered mail on December 29, 2021 (the registered mail tracking number is noted on the first page of this Decision). He testified that this package was delivered on January 11, 2022. Based on this undisputed, solemnly affirmed testimony, I am satisfied that the Tenant was sufficiently served the Landlords’ Notice of Hearing and evidence package. As service of this evidence complied with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted all of the Landlords’ evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to apply the security deposit towards this debt?

- Are the Landlords entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on April 15, 2019, and the tenancy ended when the Tenant gave up vacant possession of the rental unit on or around November 7, 2021. Rent was established at \$2,250.00 per month and was due on the first day of each month. A security deposit of \$1,125.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He stated that a move-in inspection report was conducted on July 4, 2019, and that a move-out inspection report was completed on November 21, 2021, without the Tenant present. He testified that a notice of final opportunity to conduct the move-out inspection was sent to the Tenant on November 21, 2021, for November 24, 2021. However, the Tenant informed the Landlords on November 22, 2021 that he would not be returning to the rental unit. A copy of these reports was submitted as documentary evidence for consideration.

As well, he stated that the Tenant provided a forwarding address by email on November 21, 2021. Moreover, he submitted that it was his interpretation of the Tenant's email stating "Charge me what you want." was the Tenant's authorization for the Landlords to keep the security deposit. He referenced the documentary evidence provided to support this position.

He advised that the Landlords are seeking compensation in the amount of **\$7,625.00** for rental arrears that stemmed from March 2020. He stated that the monetary order worksheet requesting \$7,650.00 was an error. He referenced his ledgers and accounting, that were submitted as documentary evidence, to support the claim for rent outstanding, which included October 2021 rent.

He then advised that the Landlords are seeking compensation in the amount of **\$525.00** for the pro-rated amount of rent owing from November 1 to November 7, 2021.

Finally, he advised that the Landlords are seeking compensation in the amount of **\$2,347.29** because the Tenant left the rental unit dirty, damaged, and in need of repair. He referenced the pictures submitted to demonstrate that the rental unit was not left in a re-rentable condition. As well, he cited the invoices submitted to account for the cost of the repairs and cleaning.

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlords and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlords and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlords must offer at least two opportunities for the Tenant to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulations* (the "*Regulations*") outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlords or the Tenant have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlords to claim against a security deposit or pet damage deposit is extinguished if the Landlords do not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlords provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenant must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the inspection reports, I am satisfied that a move-in inspection report was conducted with the Tenant. While the Landlord stated that a notice of final opportunity was served to the Tenant, it does not make sense why this would have been served after the Tenant had already given up vacant possession of the rental unit. Regardless, based on the evidence before me, I find that the Tenant abandoned the rental unit and would not have attended a move-out inspection in any event. As the move-out inspection report was then subsequently completed by the Landlords, I am satisfied that the Landlords complied with the requirements of the *Act* in completing these steps. As such, I find that the Landlords have not extinguished the right to claim against the deposit.

Section 38 of the *Act* outlines how the Landlords must deal with the security deposit at the end of the tenancy. With respect to the Landlords' claim against the Tenant's security deposit, Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposits. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposit, and the Landlords must pay double the deposits to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, I am satisfied that the tenancy effectively ended on November 7, 2021, and that a forwarding address was provided on November 21, 2021. The Landlords made this Application to claim against the deposit well past 15 days after November 21, 2021. While the Landlord claimed that it was his interpretation of the Tenant's email that they were permitted to apply the security deposit towards any outstanding debts, I do not share this specific interpretation. However, when reviewing the totality of the evidence before me, I accept that this could be one reasonable interpretation of the Tenant's intent with respect to outstanding debts. As such, I find that the Tenant authorized the Landlords to keep his security deposit. Therefore, I find that the doubling provisions do not apply to the security deposit in this instance.

With respect to the Landlords' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, 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. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenant fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlords prove the amount of or value of the damage or loss?
- Did the Landlords act reasonably to minimize that damage or loss?

With respect to the Landlords' claim for compensation in the amount of \$7,625.00, I am satisfied from the consistent and undisputed evidence that the Tenant was in arrears for rent. As such, I grant the Landlords a monetary award in the total amount of **\$7,625.00** to satisfy this claim.

Regarding the Landlords' claim for compensation in the amount of \$525.00 for pro-rated rent for November 2021, I am satisfied from the consistent and undisputed evidence that the Tenant owed rent for this month and that he occupied the rental unit until November 7, 2021. Despite the Landlords suffering from a loss of rent for the entire month, as they only claimed for the portion of pro-rated rent for the time that the Tenant occupied the rental unit, I grant the Landlords a monetary award in the total amount of **\$525.00** to satisfy this claim.

Finally, regarding the Landlords' claims for compensation in the amount of \$2,347.29 because the Tenant did not leave the rental unit in a re-rentable state, I am satisfied from the Landlord's solemnly affirmed testimony, and the undisputed documentary evidence provided, that the Landlords had to incur these costs in order to return the rental unit to a satisfactory condition. As such, I grant the Landlords a monetary award in the total amount of **\$2,347.29** to satisfy these claims.

As the Landlords were successful in these claims, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlords to apply the security deposit in partial satisfaction of these debts.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Tenant to the Landlords**

Item	Amount
Rental arrears	\$7,625.00
November 2021 pro-rated rent	\$525.00
Cost to repair rental unit	\$2,347.29
Recovery of filing fee	\$100.00
Security deposit	-\$1,125.00
<b>Total Monetary Award</b>	<b>\$9,472.29</b>

#### Conclusion

I provide the Landlords with a Monetary Order in the amount of **\$9,472.29** 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: August 2, 2022

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Residential Tenancy Branch