



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDL-S, FFL

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. On February 8, 2022, the landlord applied for:

- a monetary order for unpaid rent, requesting to retain the security and/or pet damage deposit;
- an order for the tenant to pay to repair the damage they, their pets, or their guests caused during the tenancy, requesting to retain the security and/or pet damage deposit; and
- the filing fee.

The hearing was attended by the tenant and his daughter-in-law (collectively “the tenant”), the landlord’s agent (“the landlord”), and the landlord’s realtor. Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord confirmed receipt of the tenant’s Notice of Dispute Resolution Proceeding, and the tenant confirmed receipt of the landlord’s evidence. As the tenant testified they did not submit their evidence to the Residential Tenancy Branch, or serve it on the landlord, I have not considered it in my decision.

### Preliminary Matters

In the hearing I confirmed the full legal name of the landlord's agent, who is named as the applicant.

### Issues to be Decided

- 1) Is the landlord entitled to a monetary order for unpaid rent?
- 2) Is the landlord entitled to compensation from the tenant for damages caused during the tenancy?
- 3) Is the landlord entitled to the filing fee?

### Background and Evidence

While I have considered the presented documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars of the tenancy. The tenancy was for a fixed term, beginning April 16, 2021; rent was \$6,000.00, due on the 16th of the month; and the tenant paid a security deposit of \$2,900.00, which the landlord still holds.

The landlord testified the tenancy was to end on October 15, 2021. The tenant testified that the tenancy was to have ended on September 15, 2021, but that they formed a written agreement with the landlord to extend the tenancy to October 15, 2021. The tenant testified that they then came to an agreement with the landlord, by email and telephone conversation, that the tenants could remain in the unit until December 15, 2021. The tenant testified they had been building a house across the street, and it took longer than anticipated.

The tenancy agreement submitted as evidence states that the tenancy began on April 16, 2021 and was to end on March 15, 2022. The agreement is not signed by the tenant. The agreement states that the reason why the tenant must vacate at the end of the fixed term is: "owner/family plan to move in." The tenant testified they never received a tenancy agreement that said the tenancy was to end in March.

A mutual agreement is submitted as evidence, signed by the parties on July 29, 2021 and August 6, 2021, respectively. It states the tenant agrees to vacate on October 15, 2021.

The landlord testified the tenant vacated the rental unit on December 30, 2021; the tenant testified they moved out on December 15, 2021.

The landlord's application indicates they are seeking to recover \$9,607.00 in unpaid rent. The landlord submitted as evidence a Monetary Order Worksheet, and testified they are seeking amounts as follows:

- \$1,500.00: After the tenant had signed the mutual agreement to end the tenancy on October 15, 2021, the landlord had rented the unit out to a new party for \$6,500.00 a month, with the new tenancy to begin October 17, 2021, as documented by the tenancy agreement, signed on August 6, 2021 and submitted as evidence. As the subject tenant did not move out as agreed, the new tenancy did not begin until January 15, 2022, as documented on the tenancy agreement, which shows the date changed from October 2021 to January 2022. Therefore, the landlord has applied to recover \$500.00 in lost increased monthly rent for the new tenancy, for the three-month period of October 17, 2021 to January 15, 2022, arriving at the total of \$1,500.00.
- \$6,500.00: The landlord testified that because the rental unit was "still a shambles" when the new tenants took possession in January 2022, they abandoned the unit. The landlord testified they are seeking to recover \$6,500.00 from the subject tenant for the \$6,500.00 in lost January 2022 rent from the next tenancy.
- \$1,607.14: The landlord submitted as evidence a tenancy agreement signed with a third set of tenants, who agreed to rent the unit for \$7,500.00 a month, beginning February 7, 2022. The landlord testified that because it took longer than expected to repair the damages from the subject tenant, the third set of tenants moved in 6 days late. Therefore, the landlord seeks to recover \$1,607.14 from the subject tenant, which is a prorated rent amount for 6 days at \$7,500.00 a month, for the second tenancy after the tenant vacated the unit. ( $\$7,500.00/28 \times 6 = \$1,607.14$ )

The tenant testified that when they moved out on December 15, 2021, the landlord's realtor told them he was losing the rent on the unit for December 15 to the 31st. The tenant testified they told the realtor to keep the security deposit as rent for that period. The tenant testified that they provided the keys and garage door opener to the realtor

on December 20 or 22, 2021, as the realtor had told them that no one wants to look at properties over the holidays.

The landlord's application indicates they are seeking to recover \$6,027.00 from the tenant for damages caused during the tenancy. The Monetary Order Worksheet indicates they are seeking amounts as follows:

- \$5,775.00 for damage repair and cleaning. The landlord submitted as evidence an invoice dated January 22, 2022, which lists the following costs:

DESCRIPTION		TOTAL
-Repair damaged walls throughout the house.		
-whole house interior painting		
-repair damaged floor		
Total materials and labor:		\$5,500
	SUBTOTAL	\$5,500
	G.S.T. 5%	\$275
	<b>TOTAL due</b>	<b>\$5,775</b>

The landlord provided no further testimony or documentary evidence in support, such as photos or a description of the alleged damage.

- \$252.00 for administrative costs. The landlord's agent testified that the landlord is claiming this amount for the cost of the landlord's agent's services related to the dispute.

The tenant testified they had the house professionally cleaned on December 16, 2021, and had a drywaller and painter come to fix nail holes and to paint. The tenant testified that as the old paint was in the unit, their painter was able to match it. The tenant testified that when they left the unit, there was no damage.

The parties agree that no move-in inspection or report was completed. The landlord's agent submitted he did not know if a move-out inspection or report was completed; the tenant testified that neither were. The parties agree that the tenant did not provide a forwarding address in writing. The landlord's agent testified that the tenant did not authorize the landlord to keep any portion of the security deposit; the tenant testified they told the landlord to keep the \$2,900.00 security deposit.

### Analysis

The landlord has applied for \$9,607.00 in unpaid rent and \$6,027.00 for damage to the rental unit.

Section 7 of the Act states:

#### **Liability for not complying with this Act or a tenancy agreement**

**7** (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.

Section 67 and [Policy Guideline 16](#) provide that if damage or loss results from a party not complying with the Act, the regulation, or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 includes:

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.

[Policy Guideline 3](#). *Claims for Rent and Damages for Loss of Rent* states that a tenant is liable to pay rent until a tenancy agreement ends.

Guideline 3 states that if a tenant continues to occupy the rental unit after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold, and, in certain circumstances, a tenant may be liable to compensate a landlord for loss of rent that the landlord would have collected from a new tenant if the overholding tenant had left by the end of the tenancy.

The parties have provided conflicting testimony regarding when the tenancy was to have ended. The landlord testified that the tenancy was to have ended on October 15, 2021, and submitted as evidence a signed mutual agreement to end the tenancy on that date, signed on August 6, 2021. The landlord has also submitted as evidence a tenancy agreement with new tenants to move into the unit on October 17, 2021, which was also signed on August 6, 2021. The tenant testified that following the signing of the mutual agreement to end the tenancy, the parties reached a new agreement that the tenancy would end on December 15, 2021.

I find the landlord's testimony that the tenancy was to end on October 15, 2021 more credible than the tenant's assertion that the parties later agreed the tenancy would end in December, because I find it highly unlikely that the landlord would, on the same day, sign a mutual agreement to end tenancy with the subject tenant, and sign a new tenancy agreement with another tenant for a tenancy to begin on October 17, then breach that new tenancy agreement by allowing an extension of the subject tenancy.

Additionally, the tenant has presented no evidence in support of their claim that the parties later agreed to extend the subject tenancy into December 2021.

The parties also disagree on when the tenant vacated the rental unit. The landlord testified the tenant vacated the rental unit on December 30, 2021; the tenant testified they moved out on December 15, 2021.

The tenant testified that when they moved out on December 15, 2021, they told the landlord's realtor to keep the security deposit of \$2,900.00 as rent for December 15 to the 31st. The tenant testified that they provided the keys and garage door opener to the realtor on December 20 or 22, 2021.

I find the tenant's version of events more credible, because they have provided a detailed account of what occurred at the end of the tenancy and why. The landlord has presented no evidence in support of their claim that the tenant did not vacate the unit until December 30, 2021.

Therefore, I find the tenancy ended on October 15, 2021, the date on the mutual agreement to end tenancy, and that the tenants remained in the unit, overholding, until they vacated the unit on December 22, 2021, the date the landlord gained possession of the rental unit.

As the tenants authorized the landlord to keep the security deposit as payment to the end of December, and the parties agree the landlord still holds the security deposit, I find that the tenant does not owe compensation for overholding.

The landlord testified that as the tenants did not move out on October 15, 2021 as required by the mutual agreement to end tenancy, the new tenancy started late, causing the landlord to lose \$1,500.00 in increased rent, as the new tenants were paying \$500.00 a month more than the subject tenant.

I find that after the tenant breached the mutual agreement to end the tenancy, it would have been reasonable for the landlord to promptly apply for an order of possession pursuant to the signed mutual agreement to end the tenancy in order to minimize their loss of the new, higher rent amount. However, the landlord failed to do so.

Therefore, pursuant to section 7 of the Act, the landlord is not entitled to the \$1,500.00 claimed.

The landlord has applied for compensation for January 2022 rent in the amount of \$6,500.00, testifying that due to the state of the unit at the beginning of the tenancy, the new tenants abandoned it.

The landlord and the subject tenant agree that no move-out inspection was completed at the end of the tenancy, as required by section 35 of the Act. Therefore, there is no record of the condition of the unit at the end of the tenancy. Additionally, the tenant has testified that there was no damage to the unit at the end of the tenancy.

As the landlord regained possession of the rental unit from the subject tenant on December 22, 2021, they had time to make improvements to the unit before the start of the new tenancy in January 2022. The landlord has submitted no evidence of work done to improve the unit prior to the beginning of the next tenancy.

The landlord has claimed that the second tenants moved out due to the state of the rental unit, but the landlord has not provided evidence demonstrating they made any repairs to the unit, to attempt to minimize their damage or loss related to a failure on the part of the tenant.

Therefore, I find the landlord is not entitled to recover from the subject tenant unpaid rent related to the second tenancy.

The landlord has applied for prorated rent for February 2022, testifying that because it took longer than expected to repair the damages from the subject tenant, the third set of tenants moved in late.

Again, as a move-out inspection was not completed at the end of the subject tenancy, there is no record of the condition of the unit. The landlord has submitted an invoice dated January 2022 for repairs and painting, but has provided no further evidence, including proof of payment of the invoice, or photos or descriptions of damage to the unit.

In order to prove that compensation is due, the claimant must demonstrate that a party to the tenancy agreement has failed to comply with the Act, regulation, or tenancy agreement. I find that as the landlord has provided insufficient evidence to meet this burden of proof, they are not entitled to recover from the subject tenant unpaid rent related to the third tenancy, or compensation for damages to the unit.



The landlord has also claimed \$252.00 in administrative costs for the landlord's agent's services related to the dispute. As the landlord has not provided evidence to support that their administrative costs are the result of the tenant's breach of the Act, regulation, or tenancy agreement, I find the landlord is not entitled to recover these costs.

I find, on a balance of probabilities, that the landlord has failed to prove that damage or loss resulted from the subject tenant not complying with the Act, the regulation, or the tenancy agreement, and that they acted reasonably to mitigate their loss.

Pursuant to sections 7 and 67 of the Act, I find that the landlord is not entitled to compensation.

As the landlord is unsuccessful in their application, I decline to award the filing fee.

### Conclusion

The landlord's application is dismissed.

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: October 28, 2022

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Residential Tenancy Branch