



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord February 25, 2022 (the “Application”). The Landlord applied as follows:

- To recover unpaid rent
- For compensation for monetary loss or other money owed
- For compensation for damage to the rental unit
- To keep the security deposit
- For reimbursement for the filing fee

B.S. (the “Agent”) appeared at the hearing for the Landlord. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Agent. I told the Agent they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Agent provided affirmed testimony.

The Agent withdrew the request to recover unpaid rent because this had been awarded on another RTB file.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

The Agent testified that the hearing package and Landlord’s evidence were sent to the Tenant by email March 22, 2022, pursuant to a Substituted Service Decision on file. The Decision was issued March 15, 2022, and allowed the Landlord to serve the Tenant by email at the email address noted in the Decision. The Landlord submitted the relevant email.

Based on the undisputed testimony of the Agent and email, I find the Tenant was served with the hearing package and Landlord's evidence in accordance with the Substituted Service Decision. I accept the email was sent March 22, 2022. Pursuant to the Substituted Service Decision, the Tenant is deemed to have received the hearing package and Landlord's evidence March 25, 2022. I also find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to compensation for damage to the rental unit?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

#### Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Unit changeover	\$2,443.47
2	Electricity, gas	\$337.04
3	Missing towel bar	\$100.00
4	Replace mailbox key not returned	\$53.92
5	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$3,034.43</b>

The Landlord submitted a written tenancy agreement. The Agent testified that the tenancy started October 01, 2021; however, the agreement states it started April 01, 2021. The tenancy was for a fixed term ending March 31, 2022. Rent was \$1,400.00 per month due on the first day of each month. The Tenant paid a \$700.00 security deposit.

The Agent testified as follows.

The tenancy officially ended February 15, 2022; however, the Tenant moved out February 03, 2022. The Tenant stopped paying rent and was issued a notice to end tenancy. The parties agreed the Tenant would move out at the beginning of February.

The Tenant has not provided the Landlord with a forwarding address.

The Landlord did have an outstanding Monetary Order from the RTB against the Tenant for \$5,025.00 at the end of the tenancy.

The Tenant did not agree to the Landlord keeping the security deposit.

The Condition Inspection Report (the "CIR") in evidence is accurate.

The Tenant did not attend the move-out inspection. On February 03, 2022, the neighbours told the Agent the Tenant had moved out. The Agent attended the rental unit and the Tenant had moved out.

In relation to item 1, the rental unit was almost new when the Tenant moved in. At the end of the tenancy, the walls were damaged and there was garbage in the unit. The unit had to be painted and the damage had to be repaired for a new tenant to move in.

In relation to item 2, the Tenant failed to pay electricity and gas bills owing.

In relation to item 3, a towel bar was missing from the rental unit at the end of the tenancy.

In relation to item 4, the Tenant did not return the keys to the rental unit, so the Landlord had to replace these.

The Landlord submitted the following relevant documentary evidence:

- Tenant ledgers and letter to the Tenant
- Payment receipt and NSF receipt
- Photos from the end of the tenancy
- The CIR
- Invoices, receipts, utility bills

## Analysis

### ***Security deposit***

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to security deposits if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with security deposits at the end of a tenancy.

Based on the undisputed testimony of the Agent and CIR, I find the Tenant did not extinguish their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit because extinguishment only applies to claims that are solely for damage to the rental unit and the Landlord has claimed for garbage removal, unpaid utilities and replacing keys, none of which is damage to the rental unit.

Based on the undisputed testimony of the Agent, I find the tenancy ended February 03, 2022, when the Tenant moved out.

Based on the undisputed testimony of the Agent, I find the Tenant has not provided the Landlord with a forwarding address.

Section 38(1) of the *Act* is only triggered once the tenancy has ended and the Tenant has provided the Landlord a forwarding address in writing. Given the Tenant has not provided the Landlord with a forwarding address, section 38(1) of the *Act* has not been triggered and the Landlord was entitled to claim against the security deposit when the Application was filed.

### ***Compensation***

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

Section 37 of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I accept the Agent's undisputed testimony, Landlord's undisputed position as well as Landlord's undisputed documentary evidence and, based on these, I find the following.

I accept the Tenant breached section 37 of the *Act* by:

- damaging the rental unit beyond reasonable wear and tear
- failing to leave the rental unit reasonably clean
- failing to replace a missing towel bar at the end of the tenancy
- failing to return keys

I accept the Landlord had to have damages repaired, cleaning done and items replaced at the end of the tenancy due to the nature of the Tenant's breaches of section 37 of the *Act* and that the Landlord therefore suffered loss and damage.

I accept that the amount or value of the loss and damage is as claimed by the Landlord and note that the Tenant did not appear at the hearing to dispute this.

I find the amounts claimed reasonable given the state of the rental unit at the end of the tenancy as shown in the photos. Further, the Tenant did not appear at the hearing to dispute that the amounts claimed are reasonable. I award the Landlord the amounts claimed for items 1, 3 and 4.

In relation to item 2, I accept the Tenant was required to pay for electricity and gas during the tenancy pursuant to term 3.1 of the written tenancy agreement. I accept the Tenant failed to pay \$337.04 in utilities during the tenancy. I award the Landlord the amount sought.

In relation to the filing fee, the Landlord has been successful and therefore I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

### ***Summary***

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Unit changeover	\$2,443.47
2	Electricity, gas	\$337.04
3	Missing towel bar	\$100.00
4	Replace mailbox key not returned	\$53.92
5	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$3,034.43</b>

The Landlord can keep the \$700.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$2,334.43 pursuant to section 67 of the *Act*.

### Conclusion

The Landlord can keep the security deposit. The Landlord is issued a Monetary Order for \$2,334.43. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: November 23, 2022

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Residential Tenancy Branch