



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, MNDCL, FFL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord April 05, 2022 (the “Application”). The Landlord applied as follows:

- To recover unpaid rent and/or utilities
- For compensation for monetary loss or other money owed
- For reimbursement for the filing fee

The Landlord and Tenants appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Tenants testified that they did not receive the hearing package or Landlord’s evidence and only knew about the hearing because they received an email from the RTB. The Landlord had not complied with the service methods in the *Residential Tenancy Act* (the “Act”); however, the Tenants agreed to proceed with the hearing and therefore I did proceed. I also considered the Landlord’s evidence given the Tenants agreed to proceed with the hearing despite the service issues.

The Landlord testified that they did not receive the Tenants evidence; however, the Landlord was agreeable to the evidence being considered and therefore it is admissible.

The parties were 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 recover unpaid rent and/or utilities?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started June 01, 2021, and was for a fixed term ending May 31, 2023. The Tenants paid a \$987.50 security deposit and \$987.50 pet damage deposit.

The parties agreed the tenancy ended December 31, 2021.

The Landlord sought return of \$1,975.00 they paid to the Tenants January 01, 2022. The Landlord testified as follows. The Landlord and Landlord's brother own the rental unit. At the end of the tenancy, the Tenants asked for their security and pet damage deposits back early from the Landlord so they could pay these to their new landlord. The Tenants agreed they would return the \$1,975.00 to the Landlord once they officially received their security and pet damage deposits back from the Landlord's brother. The Landlord did send the Tenants \$1,975.00. The Tenants did receive their security and pet damage deposits, minus money owing for utilities, back from the Landlord's brother. The Tenants did not repay the \$1,975.00 to the Landlord as agreed. In essence, the security and pet damage deposits were returned to the Tenants twice, once by the Landlord and once by the Landlord's brother, which should not have happened.

The Tenants acknowledged receiving \$1,975.00 from the Landlord and \$1,100.00 from the Landlord's brother at the end of the tenancy. The Tenants testified that the \$1,100.00 from the Landlord's brother was their security and pet damage deposits minus utilities owing. At the hearing, the Tenants agreed to the Landlord's brother keeping some of the security and pet damage deposits for utilities owing. At first, the Tenants testified that they do not know what the \$1,975.00 sent by the Landlord was

for. Later in the hearing, the Tenants testified that they assumed the \$1,975.00 sent by the Landlord was for January rent which they had paid to the Landlord's brother. The Tenants testified that they thought January rent was being returned to them because they moved out December 31, 2021. The Tenants testified that they paid rent to the Landlord's brother who told the Tenants the Landlord was no longer acting for them as of December 15, 2021.

In reply, the Landlord relied on text messages submitted to show the parties agreed the Tenants would return the \$1,975.00 to the Landlord upon officially receiving their security and pet damage deposits back from the Landlord's brother. The Landlord disputed that the Tenants paid January rent.

The parties submitted documentary evidence which I will refer to below as necessary.

### Analysis

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...

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 62(3) of the *Act* states:

(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Section 67 of the *Act* states:

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

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.

There was some issue raised about who is a landlord in this matter. The Landlord testified that they are part owner of the rental unit and I accept this. The Tenants acknowledged the Landlord dealt with the tenancy prior to December 15, 2021. I acknowledge that the Landlord's brother attempted to remove the Landlord as a landlord; however, I find the Landlord remained a landlord pursuant to the definition of "landlord" in section 1 of the *Act* because I accept the Landlord is part owner of the rental unit and it is clear the Landlord permitted occupation of the rental unit and exercised powers and performed duties under the *Act* and tenancy agreement.

I find the documentary evidence supports the Landlord's position. The email from the Landlord's brother to the Tenants January 13, 2022, shows the Landlord's brother returned \$1,175.00 of the "damage deposit" to the Tenants on that date. The e-transfer dated January 01, 2022, shows the Landlord sent the Tenants \$1,975.00 for the "damage deposit" on that date. I do not find the remaining documentary evidence of assistance in deciding this matter.

I do not find the testimony of the Tenants reliable or credible. During the hearing, the Tenants changed their testimony about the \$1,975.00 sent to them by the Landlord. At first, the Tenants testified that they did not know what this was for. The Tenants later

changed their testimony to say they thought the \$1,975.00 was for January rent. I find the Tenants' testimony inconsistent. Further, the documentary evidence shows that both the \$1,175.00 (or \$1,100.00) sent by the Landlord's brother and the \$1,975.00 sent by the Landlord were for return of the "damage deposit" which is specifically stated on the documents. I do not find the Tenants' testimony that they thought or assumed the \$1,975.00 sent by the Landlord was for January rent credible when the e-transfer itself states it is for the "damage deposit". I do not accept that the Tenants could have been confused about what the \$1,175.00 (or \$1,100.00) and \$1,975.00 were for. It was clear the Landlord's brother and Landlord both returned amounts representing the security and pet damage deposits.

I prefer the testimony of the Landlord over the testimony of the Tenants. I did not find the Landlord's testimony questionable, unreliable or not credible. The documentary evidence tends to support the Landlord's version of events.

I accept the Tenants asked for their security and pet damage deposits back early from the Landlord with the agreement that they would return these amounts to the Landlord once they officially received the security and pet damage deposits back from the Landlord's brother. Although unconventional, I accept that this was an agreement made between the Tenants and Landlord pursuant to their tenancy agreement in relation to what would occur with the security and pet damage deposits at the end of the tenancy. I accept that the Landlord followed through with their part of the agreement. I accept that the Tenants did not follow through with their part of the agreement. I accept that the agreement is enforceable and therefore award the Landlord \$1,975.00 pursuant to the agreement and section 67 of the *Act*.

I also note that the *Act* sets out what is to happen with security and pet damage deposits at the end of a tenancy. There is no evidence before me that the Tenants were entitled to double their security and pet damage deposits back pursuant to section 38(6) of the *Act*, nor is section 38(6) of the *Act* an issue before me on the Application. On the Application, I find the Tenants were not entitled to return of the security and pet damage deposits twice and therefore find the above award to the Landlord appropriate pursuant to section 62(3) of the *Act*.

Given the Landlord has been successful in the Application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$2,075.00 and I issue the Landlord a Monetary Order in this amount.

Conclusion

The Landlord is entitled to \$2,075.00 and is issued a Monetary Order in this amount. This Order must be served on the Tenants. If the Tenants fail to comply with this Order, it 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 *Act*.

Dated: November 30, 2022

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Residential Tenancy Branch