



# 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**

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord March 08, 2022 (the “Application”). The Landlord applied as follows:

- To recover unpaid rent
- For compensation for damage to the rental unit
- To keep the security deposit
- For reimbursement for the filing fee

The Landlord appeared at the hearing with D.T. for support. The 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.

The Landlord submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package and Landlord’s evidence. The Landlord testified that they sent the hearing package and their evidence to the Tenants April 07, 2022. Tenant M.C. confirmed receipt of the hearing package and Landlord’s evidence and said it might have been sent April 07, 2022. Tenant T.C. confirmed receipt of the hearing package and Landlord’s evidence and did not dispute that it was sent April 07, 2022. Pursuant to section 71 of the *Residential Tenancy Act* (the “Act”), I find the Tenants were sufficiently served with the hearing package and Landlord’s evidence in April of 2022 and therefore well before the hearing.

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?
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	Plumber	\$89.25
2	Knob	\$1.07
3	Shampooer	\$52.98
4	Bleach	\$8.95
5	Supplies to fix walls and shower head	\$223.19
6	Gas	\$80.00
7	Garbage	\$11.56
8	Garbage	\$26.21
9	Repair man	\$50.00
10	Cleaning and repairs	\$390.00
11	Rent for March	\$2,600.00
12	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$3,633.21</b>

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started June 01, 2021, and was a month-to-month tenancy. Rent was \$2,600.00 per month due on the first day of each month. The Tenants paid a \$1,300.00 security deposit.

The parties agreed the Tenants moved out of the rental unit March 02, 2022.

The parties agreed they did a move-in inspection, and the Condition Inspection Report (the "CIR") was completed.

The Landlord testified that the parties did a move-out inspection, and the Landlord signed the CIR, but the Tenants would not sign the CIR. The Tenants agreed a

move-out inspection was done and testified that they did not sign the CIR and do not know if the Landlord signed the CIR.

At the hearing, the Tenants agreed to the Landlord keeping the security deposit.

### ***#1 Plumber***

The Landlord sought compensation for the cost of a plumber on the basis that the Tenants broke a toilet in the rental unit causing it to overflow and the plumber found a toy lodged in the toilet.

The Tenants testified that the toilet worked fine when they were still at the rental unit.

### ***#2 Knob***

The Landlord sought compensation for the cost of a knob purchased at a second-hand store to replace a knob removed from a door by the Tenants.

The Tenants testified that they do not know about a knob being removed from a door.

### ***#3 Shampooer***

The Landlord sought compensation for the cost of renting a carpet shampooer and shampooing the carpet in the rental unit because the Tenants did not do so.

The Tenants testified that they did shampoo the carpet and it was clean when they left.

### ***#4 Bleach***

The Landlord sought compensation for the cost of bleach to clean the rental unit which the Landlord testified was left filthy at the end of the tenancy.

The Tenants agreed they forgot items in the fridge but disagreed that they left the rental unit dirty at the end of the tenancy. The Tenants testified that the rental unit was immaculate when they left.

***#5 Supplies to fix walls and shower head***

The Landlord sought compensation for the cost of supplies to do mudding and filling in the rental unit due to damage caused by the Tenants. The Landlord testified that the shower head was also removed by the Tenants.

The Tenants disputed the Landlord's position in relation to this item and testified that the rental unit was left in better shape than when they moved in. Tenant M.C. testified that the Tenants did remove a shower head but that it was left in the rental unit and just had to be screwed back in.

***#6 Gas***

The Landlord sought compensation for the cost of gas used to drive around and get supplies to address the issues in the rental unit.

The Tenants said they do not know what to say about this and that they cannot say if the Landlord did this or why the Landlord did this.

***#7 Garbage***

***#8 Garbage***

The Landlord sought compensation for the cost of borrowing a truck, making several trips to the dump and paying dump fees for items the Tenants left in the rental unit.

The Tenants acknowledged they left items at the rental unit but said these would have only needed one dump run and the dump was three kilometers down the road from the rental unit.

***#9 Repair man***

The Landlord sought compensation for the cost of hiring someone to assist with changing doorknobs in the rental unit that were removed and loading the truck with the Tenants' items.

The Tenants again said the Landlord likely only had to make one dump run due to items they left in the rental unit. The Tenants disputed that they removed doorknobs in the rental unit.

### ***#10 Cleaning and repairs***

The Landlord sought compensation for their time spent cleaning and addressing repairs in the rental unit which the Landlord testified took 20 hours.

The Tenants disputed this claim. The Tenants testified that the Landlord came four hours earlier than planned to do the move-out inspection, before the Tenants could get cleaning done and before the Tenants were done with the rental unit. The Tenants said they were unable to finish a dump run and putting the shower head back on but that the rental unit was otherwise in good condition.

In reply, the Landlord disputed the Tenants' evidence and testified that they attended the rental unit at 8:00 p.m. as agreed upon.

### ***#11 Rent for March***

The Landlord sought unpaid rent for March on the basis that the Tenants ended the tenancy early in breach of the *Act*. The Landlord submitted the Tenants' notice dated February 20, 2022, ending the tenancy for March 02, 2022. The Tenants state that their notice is 10 days notice pursuant to the "2 Months Notice" to sell the rental unit. The Landlord testified that they never tried to re-rent the unit because it was put up for sale at the end of March and sold. The Landlord testified that they never issued the Tenants a notice to end tenancy on an RTB form.

The Tenants acknowledged they were never issued a notice to end tenancy on an RTB form.

### ***Documentary Evidence***

The Landlord submitted the following documentary evidence:

- Tenants' notice to end tenancy
- Tenancy agreement
- CIR
- Receipts, invoices and statements

## **Analysis**

### ***Security deposit***

The Landlord can keep the security deposit because the Tenants agreed to this during the hearing.

### ***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.

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.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Here, the parties gave conflicting testimony about most of the issues before me. I did not find one party to be more reliable or credible than the other and therefore I have focused on what documentary evidence there is before me to support each position.

***Items #1 to 10***

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...

I do not place much weight on the CIR because the Tenants did not agree with it or sign it and therefore it simply represents the Landlord's own opinion and view of the rental unit at the end of the tenancy.

When tenants do not agree with a Condition Inspection Report, the landlord should obtain independent compelling evidence of the state of the rental unit at the end of the tenancy such as photos or videos, both of which are easy to obtain. A landlord could also have a witness present at inspections to provide witness statements about the state of the rental unit. Here, the Landlord has not provided photos or videos of the rental unit at the end of the tenancy or witness statements from the move-out inspection.

I find the only compelling evidence to support the Landlord's position about cleanliness and damage in the rental unit at the end of the tenancy are the signed statement of K.K. that they hauled items from the rental unit to the dump and the corresponding receipts from the dump. The remaining receipts do not prove anything about the condition of the rental unit at the end of the tenancy. The receipts simply show the Landlord purchased items. I acknowledge that the statement of K.K also refers to changing door knobs; however, I am not satisfied this is sufficient proof that the Tenants did not return keys to the Landlord or removed doorknobs versus the Landlord choosing to change locks at the end of the tenancy.

I note that the plumber's invoice does describe attending the rental unit and fixing a toilet plug; however, the invoice is for March 05, 2022, three days after the Tenants moved out of the rental unit. I am not satisfied the Tenants caused the issue with the toilet that was addressed three days after the Tenants had moved out.

None of the remaining evidence submitted by the Landlord is compelling evidence to support the Landlord's position.

The Tenants did acknowledge some of the issues raised by the Landlord including forgetting items in the fridge, removing a shower head and leaving one dump load of items in the rental unit. I find these issues are breaches of section 37 of the *Act* because the Tenants were required to remove all of their belongings at the end of the tenancy and to replace the shower head. I accept that the Landlord had to clean out items from the fridge, replace the shower head and have one dump load of items removed from the rental unit.

In relation to cleaning out the fridge and replacing the shower head, I award the Landlord **\$25.00** for these issues because the average cost of cleaners is \$20.00 to \$25.00 per hour and replacing the shower head would have been an easy fix.

In relation to the dump run, the parties disagreed about how many items were left by the Tenants and the Landlord has not submitted any photos or videos to show the items left. In the circumstances, I award the Landlord **\$43.89** being half the cost of the dump run receipt totals plus one hour of K.K.'s time at \$25.00 per hour.

I do not find that the Landlord has provided sufficient compelling evidence to prove entitlement to the remaining items.

### ***#11 Rent for March***

The Tenants were in a month-to-month tenancy and had to comply with section 45(1) of the *Act* to end the tenancy which states:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and



(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Pursuant to section 53 of the *Act*, incorrect effective dates on notices to end tenancy are automatically changed.

The Tenants were not entitled to end the tenancy through a 10 day notice as this is only allowed when tenants have been served with a notice to end tenancy pursuant to section 49 of the *Act*. Here, the parties agreed the Tenants were not served with a notice to end tenancy on an RTB form and therefore they were not served with a notice to end tenancy pursuant to section 49 of the *Act*. The Tenants had to comply with section 45(1) of the *Act*.

I accept that the Tenants provided notice ending the tenancy February 20, 2022, because the notice is in evidence, and this was not in dispute. Pursuant to section 53 of the *Act*, the Tenants' notice was effective March 31, 2022, and the Tenants remained liable to pay rent or for loss of rent up until this point.

I do not find that the Landlord mitigated their loss in relation to March rent because the Landlord did not try to re-rent the unit and instead sold the unit. However, I award the Landlord March rent because of how late in February the Tenants provided their notice ending the tenancy. I find it highly unlikely that the Landlord could have re-rented the unit for March having received notice February 20, 2022, and therefore I accept that the Landlord is entitled to March rent.

### **#12 Filing fee**

Given the Landlord has been partially successful in the Application, 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:

<b>Item</b>	<b>Description</b>	<b>Amount</b>
1	Plumber	-
2	Knob	-
3	Shampooer	-
4	Bleach	-
5	Supplies to fix walls and shower head	-
6	Gas	-
7	Garbage	\$43.89
8	Garbage	Above
9	Repair man	Above
10	Cleaning and repairs	\$25.00
11	Rent for March	\$2,600.00
12	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$2,768.89</b>

The Landlord can keep the \$1,300.00 security deposit. The Landlord is issued a Monetary Order for \$1,468.89 pursuant to section 67 of the *Act*.

### **Conclusion**

The Landlord can keep the security deposit. The Landlord is issued a Monetary Order for \$1,468.89. 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: December 21, 2022

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Residential Tenancy Branch