



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Tenant: MNSDB-DR, FFT  
Landlord: MNDL, FFL

### **Introduction**

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear two crossed applications regarding a residential tenancy dispute.

The tenant applied on April 7, 2022 for:

- return of the security and pet damage deposit that the landlord is holding without cause; and
- recovery of the filing fee.

The landlord applied on August 23, 2022 for:

- compensation for damage caused by the tenant, their pets, or their guests to the unit or property, requesting to retain the security and/or pet damage deposit; and
- recovery of the filing fee.

The hearing was attended by the tenant and his counsel, and by the landlord. 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.

Neither party raised an issue regarding service of the hearing materials.

### Preliminary Matters

In a previous hearing, noted on the cover page of this decision, the landlord had applied for a monetary order for damage, seeking authorization to retain the tenant's security and pet damage deposits.

In that decision, the arbitrator stated they did not consider the landlord's request to recover the cost of a \$2,500.00 insurance deductible, or to increase his monetary claim for replacement of blinds, because the landlord had not filed an amendment seeking to increase his monetary claim and did not serve the tenant with such an amendment.

In the previous proceeding, the arbitrator heard on damage to the blinds in the rental unit, and awarded the landlord \$300.00 for blind replacement.

In the application before me, the landlord is seeking \$4163.97 for damage to blinds and \$2,500.00 for the insurance deductible to repair damage to the master bedroom flooring.

As the issue of damage to blinds has been previously heard and decided, I did not hear on it. As the previous arbitrator did not hear on the landlord's claim regarding damage to the master bedroom flooring, I heard on the matter.

In the previous decision, the arbitrator found the landlord was entitled to retain \$788.00 of the tenant's security deposit. The arbitrator ordered the landlord to return the remaining \$512.00 of the security deposit and the \$1,300.00 pet damage deposit to the tenant.

In the description of the tenant's application for return of the security and pet damage deposit, the tenant indicated they are seeking to recover the final month's rent owed to them by the landlord.

As the matter of the security and pet damage deposits has been previously heard on and decided, in accordance with section 62(4)(b), I dismiss the tenant's application for the return of the deposits

Rule 4.2 allows an arbitrator to amend an application in the hearing in circumstances that can be reasonably anticipated. As the tenant's application clearly indicated they seek to recover the final month's rent, I find it reasonable to amend the tenant's application to add a claim for compensation from the landlord related to a Two Month

Notice to End Tenancy for Landlord's Use of Property. When asked, the landlord did not object to this amendment.

### Issues to be Decided

- 1) Is the tenant entitled to compensation equivalent to one month's rent, having been served a Two Month Notice?
- 2) Is the tenant entitled to the filing fee?
- 3) Is the landlord entitled to compensation for damage to the master bedroom flooring?
- 4) Is the landlord entitled to the filing fee?

### Background and Evidence

While I have considered all the documentary evidence presented and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

The parties agreed on the following facts. The tenancy began June 15, 2020; rent was \$2,600.00, due on the first of the month; the tenant paid a security deposit of \$1,300.00 and a pet damage deposit of \$1,300.00; and the tenancy ended on August 31, 2021.

The tenant testified that the landlord served him with a Two Month Notice, a copy of which was submitted as evidence. The effective date is September 30, 2021. The tenant noted that page 3 of the Notice states that the landlord must compensate the tenant an amount equal to one month's rent, and if the tenant has already paid the last month's rent, the landlord must refund the tenant that amount.

The tenant noted that the Notice states that tenants served with a Two Month Notice may end a periodic tenancy before the effective date if they give the landlord at least 10 days written notice.

The tenant testified that he paid rent on August 1, 2021, then gave the landlord written notice by email on August 13 that he would be moving out by August 31, 2021. A copy of the email is submitted as evidence.

The tenant testified the landlord has not yet compensated the tenant the required amount equal to one month's rent.

The landlord testified that he had offered to settle with the tenant, thinking it was fair for the landlord to withhold the one month's compensation because of the amount the tenant owes the landlord for damages.

Regarding his application to recover the \$2,500.00 insurance deductible for damage to the master bedroom floor, the landlord submitted as evidence a photo which shows a wood floor, with two corners of one piece not flush with the floor. A second photo is a close up of the end of a floorboard, which is chipped and has lifted away from the rest of the floor. A third photo is a close up, showing a different scuffed and chipped patch of one floorboard.

The landlord testified that the flooring had to be replaced as a result of the damage.

The landlord testified that the insurance company assessed the damage as caused by a sudden and accidental incident; the landlord submitted as evidence a November 30, 2021 email from a claims adjuster, stating the same.

The landlord submitted as evidence an invoice from a restoration company for the \$2,500.00 deductible and a repair estimate for \$8,313.29. Also submitted by the landlord is a Monetary Order Worksheet, referencing a \$2,500.00 claim for flooring remediation. The landlord testified that the total cost to repair the flooring was \$8,500.00.

The tenant has submitted as evidence a copy of the move in/out inspection report which the tenant testified was completed by the tenant and the property management company, before move in and on the day of move out. Regarding the master bedroom floor, it states: "scratches + floor lifting, floorboard damaged."

The tenant submitted that the report refers to "floorboard" in the singular, not plural, indicating damage to a single floorboard. The tenant noted that the repair estimate references \$3,621.00 for the cost of just the flooring; the tenant submitted that damage to a single floorboard does not require replacement of a whole floor at a cost of \$3,621.00.

Regarding the insurance adjuster's finding that the damage was caused by a sudden accidental incident, the tenant submitted that there is nothing in the adjuster's letter explaining how the adjuster determined the cause, or evidence that the damage was caused by the tenant.

The tenant testified that they had had some issues with mould build up and moisture in the bedroom, and submitted as evidence 2 photos depicting condensation on windows in another bedroom on the same floor. The tenant testified the photos were emailed to the property manager on January 4, 2021. A copy of the email is submitted as evidence. The tenant testified that the following day the property manager emailed him back, asking him to check the master bedroom closet for moisture, stating that there had been a prior moisture issue in the unit, before the subject tenancy, but it seemed to go away.

The tenant testified that the landlord was not present for the move in and out inspections, and therefore the tenant queries the landlord's ability to speak to the condition of the master bedroom flooring at those times, other than what is stated on the report, which notes damage to a single floorboard.

The landlord submitted that while his property manager was present for the inspections, a property manager cannot reasonably be expected to be aware of subsurface damage caused by water. The landlord testified that the floorboard is an example, but the water damage below it is why the flooring needed to be repaired. The landlord submitted this is why the insurance company was willing to fund the repair. The landlord referenced the November 30, 2021 email from the insurance company, stating they will not repair damage to the walls or blinds, but they will repair the water damage.

I note that the email from the insurance company states: "We determined that the water damage in the upper level bedroom would have been a sudden and accidental incident"; it does not state that the damage was caused by the tenant.

The landlord submitted that he agrees with the move out report, but that a move out report alone cannot assess water damage. The landlord submitted that the insurer and restoration company assessed the water damage, which is why he is seeking to recover the deductible.

Regarding the photos submitted by the tenant showing moisture buildup, the landlord submitted that those photos long predate the flooring issue, and reflect that the tenant did not open windows to let moisture out of the rental unit. The landlord submitted that the damage to the flooring has nothing to do with the tenant's "inability" to open the windows.

The tenant submitted the landlord did not provide evidence regarding the condition of the subflooring. The tenant submitted that he is an HVAC professional and that moisture issues in a building are not addressed by opening a window.

## Analysis

### *Tenant's application*

Section 51(1) of the Act provides that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

51(1.2) of the Act provides that if a tenant referred to in section 51(1) paid rent before giving the landlord notice under section 50, the landlord must refund the amount paid.

A copy of the Two Month Notice is submitted as evidence; it has an effective date of September 30, 2021.

The tenant testified that he paid rent for August 2021, then gave the landlord written notice on August 13 that he would be moving out by August 31, 2021.

The landlord testified that he withheld the one month's compensation because the tenant owes him money for damages.

Considering the foregoing, I find that the Act required the landlord to refund \$2,600.00, the amount equivalent to one month's rent, to the tenant by September 30, 2021.

Therefore, I find the tenant is entitled to a monetary award in the amount of \$2,600.00, pursuant to section 51(1.2).

### *Landlord's application*

Section 7 of the Act provides that if a landlord or tenant does not comply with the Act, the regulations, or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the

agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord has applied for compensation for damage to the master bedroom flooring, specifically to recover the \$2,500.00 insurance deductible, and has submitted an invoice from a restoration company for the amount.

While the landlord submitted evidence about the condition of the floors in the master bedroom, I find there is insufficient evidence demonstrating that the damage was attributable to the tenancy. In order to make a claim for a monetary award for damages, the applicant must show, on a balance of probabilities, that the damage arose during the tenancy, and is greater than that which would be expected in the ordinary course of occupying a rental suite. I find that the evidence presented does not meet that evidentiary burden.

The landlord has submitted photographs showing one floorboard that is not flush with the surrounding boards, and photos of a few scuffs and chips. The landlord has submitted an email from his insurance company, which states that the cause of the water damage in the master bedroom would have been a sudden and accidental incident; it does not state that the damage was caused during the tenancy, by the tenant.

The tenant has submitted a copy of the move in/out inspection report which the tenant testified was completed by the tenant and the property manager. Regarding the master bedroom floor, it states: "scratches + floor lifting, floorboard damaged." The tenant noted that the report refers to "floorboard" in the singular, indicating damage to a single floorboard.

The landlord submitted that he agrees with the move out report, and that while his property manager was present for the inspections, a property manager would not be aware of subsurface damage caused by water.

The landlord testified that water damage to the subfloor has resulted in the need to replace the flooring. However, the landlord has not submitted evidence showing the condition of the subflooring, or clearly demonstrating that water damage occurred due to the tenant's violation of the tenancy agreement or a contravention of the Act.

The tenant has submitted as evidence an email in which the property manager states that there was an issue with moisture in the rental unit prior to the subject tenancy.

Considering the foregoing, I find, on a balance of probabilities, that the landlord has failed to prove that the damage stemmed directly from a violation of the tenancy agreement or a contravention of the Act on the part of the tenant, and is greater than that which would be expected in the ordinary course of occupying a rental suite.

Consequently, I find that the landlord is not entitled to monetary compensation for damage.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is successful in his application, I order the landlord to pay the \$100.00 filing fee the tenant paid to apply for dispute resolution.

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

I find the tenant is entitled to a monetary order in the amount of \$2,700.00, comprising \$2,600.00 for the one month's compensation, and \$100.00 for the filing fee.

### Conclusion

The tenant is granted a monetary order in the amount of \$2,700.00.

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: December 1, 2022

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Residential Tenancy Branch