



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

On April 18, 2022, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On May 5, 2022, this hearing was scheduled to commence on January 5, 2023, at 1:30 PM.

The Landlord attended the hearing; however, the Tenant did not make an appearance at any point during the 19-minute teleconference. At the outset of the hearing, I informed the Landlord that recording of the hearing was prohibited, and she was reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 1:30 PM and monitored the teleconference until 1:49 PM. Only the Applicant dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the only other person who had called into this teleconference was the Applicant.

The Landlord advised that the Notice of Hearing and evidence package was served to the Tenant by email on May 5, 2022, pursuant to a Substituted Service Decision dated May 5, 2022. She referenced a proof of service email, that was submitted as documentary evidence, to corroborate service. Based on this undisputed testimony, I am satisfied that the Landlord’s Notice of Hearing and evidence package was duly

served to the Tenant. As such, the Landlord's documentary evidence will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that she inherited the Tenant when she purchased the rental unit, and that she created a new tenancy that started on November 27, 2020. She stated that the tenancy ended when the Tenant gave up vacant possession of the rental unit on March 31, 2022, after being served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Rent was established at an amount of \$1,350.00 per month and was due on the first day of each month. A security deposit of \$675.00 was transferred from the previous owner of the rental unit. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

She indicated that she is uncertain if a move-in inspection report was conducted as she did not receive a copy from the previous owner, and she noted that a move-out inspection report was not conducted as the Tenant gave up vacant possession of the rental unit and did not inform her. As well, she stated that the Tenant never provided a forwarding address in writing.

She advised that she was seeking compensation in the amount of **\$2,780.00** for rental arrears stemming from a recurring balance owing. As the Tenant did not pay any rent on March 1, 2022, the amount requested was for the Tenant's total arrears to date. She referred to a rent ledger and a 10 Day Notice to End Tenancy for Unpaid Rent, that were submitted as documentary evidence, to support this position.

She then advised that she was seeking compensation in the amount of **\$100.00** for the cost of general cleaning of the rental unit as the Tenant did not leave it in a re-rentable state. She did not submit any documentary evidence to corroborate the actual condition the rental unit was left in though. However, she cited text messages with a cleaner and an e-transfer for payment of cleaning, that were submitted as documentary evidence, to support this claim.

Finally, she advised that she was seeking compensation in the amount of **\$196.00** for the cost of carpet cleaning to remove a children's paint stain. She referenced text messages from the carpet cleaning company and an invoice, that were submitted as documentary evidence, to substantiate this claim.

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulation* (the "*Regulation*") outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenant have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit or pet damage deposit is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenant must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the inspection reports, as a move-in and move-out inspection report were not included, I am satisfied that the Landlord did not comply with the requirements of the *Act* in completing these reports. As such, I find that the Landlord has extinguished the right to claim against the deposit for damage to the rental unit.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit and/or pet damage deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenant's security deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, a forwarding address in writing was never provided. Furthermore, while the Landlord has extinguished the right to claim against the deposit for damage, the Landlord also applied to claim for rent, which is not considered damage to the rental unit. As such, and as a forwarding address was never provided by the Tenant, I find that the doubling provisions do not apply to the security deposit in this instance.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenant fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

With respect to the Landlord's claim for compensation in the amount of \$2,780.00 for rental arrears, the consistent and undisputed evidence is that the Tenant was in arrears for rent. As such, I grant the Landlord a monetary award in the amount of **\$2,780.00** to satisfy this claim.

Regarding the Landlord's claim for compensation in the amount of \$100.00 for the cost to clean the rental unit, the Tenant did not submit any evidence or attend the hearing to refute the Landlord's claim that she did not leave the rental unit in a re-rentable state. Based on the consistent and undisputed evidence before me, I am satisfied that the rental unit required general cleaning. Consequently, I grant the Landlord a monetary award in the amount of **\$100.00** to remedy this matter.

Finally, with respect to the Landlord's claim for compensation in the amount of \$196.00 for the cost to clean the carpet in rental unit, the Tenant did not submit any evidence or attend the hearing to refute the Landlord's claim that the carpet was damaged at the end of the tenancy. Based on the consistent and undisputed evidence before me, I am satisfied that the Tenant stained the carpet, and that it required being cleaned. As such, I grant the Landlord a monetary award in the amount of **\$196.00** to rectify this claim.

As the Landlord was successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these claims.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Tenant to the Landlord**

Item	Amount
Rental arrears	\$2,780.00
Cleaning	\$100.00
Carpet cleaning	\$196.00
Recovery of filing fee	\$100.00
Security deposit	-\$675.00
<b>Total Monetary Award</b>	<b>\$2,501.00</b>

#### Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$2,501.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the

Tenant fail to comply with this Order, this Order 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 *Residential Tenancy Act*.

Dated: January 6, 2023

---

Residential Tenancy Branch