



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      MNDL, MNDCL, FFL

### **Introduction**

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord June 13, 2022 (the “Application”). The Landlord applied as follows:

- For compensation for damage caused by the tenant, their pets or guests to the unit or property
- For compensation for monetary loss or other money owed
- To recover the filing fee

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

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 Landlord testified that the hearing package and their evidence were emailed to the Tenant June 22, 2022. The Landlord had submitted a Substituted Service Decision from a previous RTB file showing they were permitted to serve documents for that file on the Tenant by email. The Landlord confirmed the last email communication they received from the Tenant was on September 30, 2021. The Landlord had submitted a copy of the June 22, 2022 email.

Pursuant to section 71(2) of the *Residential Tenancy Act* (the “Act”), I find the Tenant sufficiently served with the hearing package and Landlord’s evidence by email on June

22, 2022. Given the Landlord was permitted to serve the Tenant by email in the Substituted Service Decision issued November 15, 2021, and given the Landlord served the Tenant for this file just over seven months later, I am satisfied it is reasonable to conclude that the Tenant would have received the documents for this file and have actual knowledge of the hearing and issues. In my view, using the Tenant's email address as an address for service for up to one year after the Tenant communicated with the Landlord by email is sufficient. Pursuant to section 71(2) of the *Act*, I find the Tenant received the hearing package and Landlord's evidence June 25, 2022, three days after it was emailed. 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 Landlord 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 damage caused by the tenant, their pets or guests to the unit or property?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to recover the filing fee?

### **Background and Evidence**

The Landlord sought the following compensation:

Item	Description	Amount
1	Late fees July 2021	\$200.00
2	Late fees August 2021	\$200.00
3	Late fees September 2021	\$200.00
4	Late fees October 2021	\$200.00
5	Loss of rent November 2021	\$1,806.46
6	Cleaning fees	\$1,010.00
7	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$3,716.46</b>

A written tenancy agreement was submitted. The tenancy started December 01, 2020, and was a month-to-month tenancy. Rent was \$2,000.00 per month due on the first day of each month. The Tenant paid a \$1,000.00 security deposit. Under term 3 of the agreement it states, "\$50 fee for a week late payment, continues every week".

The Landlord submitted a prior RTB decision showing the Landlord was issued an Order of Possession for the rental unit.

The Landlord testified as follows.

The Landlord served the Order of Possession on the Tenant. The Tenant moved out of the rental unit November 02, 2021. It took the Landlord and cleaners a while to clean the unit. The Landlord tried to re-rent the unit in November but did not re-rent it until January. The Landlord lost rent for November due to the Tenant.

The Tenant did not pay rent for July to October of 2021 and therefore owes late fees for rent for these months pursuant to term 3 of the tenancy agreement.

The Landlord gave the Tenant a list of costs if the Tenant did not clean the rental unit. The Tenant did not clean the rental unit at the end of the tenancy. The Landlord did most of the cleaning of the rental unit but did hire cleaners who did two hours of cleaning at \$30.00 per hour. The Landlord spent 12 hours cleaning.

The Landlord sought to serve any Orders issued on the Tenant by email.

The Landlord submitted the following relevant documentary evidence:

- Photos of the rental unit at the end of the tenancy
- Account statements and overviews
- E-transfer accounts
- Cleaning charges list
- Prior RTB Decision and Orders

## **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.

(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.

I accept the undisputed testimony of the Landlord and based on it, as well as the relevant documentary evidence, I find as follows.

***#1 Late fees July 2021 \$200.00***

***#2 Late fees August 2021 \$200.00***

***#3 Late fees September 2021 \$200.00***

***#4 Late fees October 2021 \$200.00***

Section 7 of the *Residential Tenancy Regulation* states:

7 (1) A landlord may charge any of the following non-refundable fees...

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

Term 3 of the tenancy agreement sets out a late fee for late payment of rent. I accept that the Tenant failed to pay rent and therefore paid rent late from July to October of 2021. The maximum the Landlord can charge for this is \$25.00 per month and therefore I award the Landlord \$100.00 for late fees.

**#5 Loss of rent November 2021 \$1,806.46**

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...

The Tenant did not clean the rental at all and the photos show the Landlord and cleaners had to do a lot of cleaning before the rental unit could have been re-rented. I accept that the Tenant breached section 37 of the *Act* by leaving the rental unit in the state they did. I accept that, given the Tenant did not move out until November 02, 2021, and given the state of the rental unit at the end of the tenancy, the Landlord could not reasonably re-rent the unit for November. I also accept that the Landlord tried to re-rent the unit in November but did not find a new tenant until January. I award the Landlord loss of rent for November.

**#6 Cleaning fees \$1,010.00**

As stated, the Tenant breached section 37 of the *Act* by leaving the rental unit in the state shown in the photos. I accept that the Landlord had to clean the rental unit for at

least 12 hours and that the Landlord had to hire cleaners to help clean the rental unit for two hours at \$30.00 per hour. The usual rate for cleaners is \$20.00 to \$25.00 per hour and I award the Landlord \$300.00 for the 12 hours of cleaning they did. I also award the Landlord \$60.00 for the cost of hiring cleaners because I accept they charged \$30.00 per hour and I do not find this amount to be unreasonable. The Landlord is awarded \$360.00 for this item.

#### **#7 Filing fee \$100.00**

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*.

#### **Summary**

The Landlord is entitled to the following:

<b>Item</b>	<b>Description</b>	<b>Amount</b>
1	Late fees July 2021	\$25.00
2	Late fees August 2021	\$25.00
3	Late fees September 2021	\$25.00
4	Late fees October 2021	\$25.00
5	Loss of rent November 2021	\$1,806.46
6	Cleaning fees	\$360.00
7	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$2,366.46</b>

The Landlord is issued a Monetary Order for \$2,366.46 pursuant to section 67 of the *Act*.

#### **Service**

The Landlord sought to serve any Orders issued on the Tenant by email. The Landlord acknowledged the last email correspondence they received from the Tenant was on September 30, 2021, one year and five months ago. I cannot be satisfied that the Tenant would receive the Monetary Order if it was sent by email to an address last confirmed active September 30, 2021. Therefore, the Landlord must serve the Tenant the Monetary Order in accordance with section 88 of the *Act* which states:

88 All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- (j) by any other means of service provided for in the regulations.



**Conclusion**

The Landlord is issued a Monetary Order for \$2,366.46. This Order must be served on the Tenant. If the Tenant fails 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: February 24, 2023

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Residential Tenancy Branch