



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDL-S, MNDCL-S, FFL

### Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- a monetary order pursuant to ss. 67 and 38 for compensation for damage to the rental unit caused by the tenant, their pets, or guests by claiming against the security deposit;
- a monetary order pursuant to ss. 67 and 38 compensating for loss or other money owed by claiming against the deposit; and
- return of the filing fee pursuant to s. 72.

P.B. appeared as the Landlord. The Tenant did not attend the hearing.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord was granted a substitutional service order to serve the Tenant via email. The Landlord advised that he served his application and evidence on the Tenant via email and confirmed the email in which it was sent. I accept the Landlord’s undisputed evidence that he served the Tenant with his application and evidence. I find that the Tenant was served with the Landlord’s application materials in accordance with the *Act*.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure and concluded without submissions from the Tenant.

### Issues to be Decided

- 1) Is the Landlord entitled to monetary compensation for damage to the rental unit?
- 2) Is the Landlord entitled to monetary compensation for other money owed?
- 3) Is the Landlord entitled to claim against the security deposit?
- 4) Is the Landlord entitled to his filing fee?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on December 1, 2020.
- The Tenant vacated the rental unit on May 31, 2022.
- Rent of \$2,200.00 was due on the first of each month.
- The Tenant paid a security deposit of \$1,100.00 to the Landlord.

A copy of the tenancy agreement was put into evidence by the Landlord. The Landlord advises that the Tenant signed a Form K with respect to the Tenant's responsibilities in the strata. The Landlord's evidence does not include a copy of the Form K signed by the Tenant.

The Landlord advises that when the Tenant vacated the rental unit, it was left in an unclean state. The Landlord's evidence includes various photographs, which the Landlord says were taken in the rental unit after he took back possession when the Tenant vacated. The Landlord seeks \$350.00 for cleaning the rental unit and I am directed to a receipt for this amount in the Landlord's evidence.

The Landlord also seeks compensation from the Tenant for the payment of various strata fines which I am told were incurred due to the Tenant's conduct. The Landlord has provided a monetary order worksheet which summarizes the fees as follow:

Illegal Move-in & Move-in Fee	\$500.00
Fine for dog off leash	\$200.00
Dog Waste Violation	\$200.00
Fine for missed Terminix Visit	\$200.00

The Landlord's evidence includes letters dated December 20, 2020, December 16, 2021, December 21, 2021, and May 18, 2022 from the strata management company with respect to the various fees imposed. The Landlord says that he counselled the Tenant to attend the strata meetings if he so wished to speak to the various fines, though it does not appear he did so. The Landlord confirms he has paid the Tenant's strata fines.

The Landlord says that a move-in condition inspection was conducted, confirming this took place on November 30, 2020. I am advised the Tenant was given a copy of the move-in inspection report.

The Landlord further advises that he had an agreement to conduct the move-out inspection at noon on May 31, 2022, though the Tenant asked for a few more hours. The Landlord says he agreed to do so, though eventually attended the rental unit at 5:00 PM to find the Tenant had vacated the rental unit, left the patio door open, and spread bird seed from the balcony into the rental unit. The Landlord conducted the move-out inspection on May 31, 2022 without the Tenant's participation. I was provided with a copy of the move-out condition inspection report, which the Landlord says was provided to the Tenant on June 1, 2022.

The Landlord confirmed that the Tenant has not provided a forwarding address and that he has not responded to his various emails since moving out.

### Analysis

The Landlord seeks monetary orders at the end of the tenancy.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or

the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

The Landlord seeks compensation for cleaning the rental unit. Section 37(2) of the *Act* imposes an obligation on tenants to leave the rental unit in a reasonably clean and undamaged state, except for reasonable wear and tear, and to give the landlord all keys in their possession giving access to the rental unit or the residential property.

In this instance, I have little difficulty finding that the Tenant breached his obligation under s. 37(2) of the *Act* to return the rental unit in a reasonably clean state. The photographs provided, which I accept show the state of the rental unit when the Tenant vacated, show the rental unit in a state of significant uncleanliness, including paint, varnish, and paint supplies left inside the drum of one of the laundry machines. I accept that the Landlord incurred the cost of a cleaner totalling \$350.00 as demonstrated in the receipt provided. The Landlord could not have mitigated his damages under the circumstances given the extent of cleaning required. I find that the Landlord has established his claim for \$350.00.

Looking next to the strata fines, though I am not provided with a signed copy of the Form K, I accept the Landlord's undisputed testimony that the Tenant had signed the Form K by which he agreed to adhere to the strata bylaws. I accept that by signing the Form K, the bylaws formed part of the tenancy agreement.

Looking first to the fines outlined in the December 21, 2020 letter, the strata assessed a fine of \$500.00 which was described as follows:

There was an illegal move in on December 5th, 2020 seen by several Council members. Please be aware that because the tennant (sic) is moving in illegally

your account ledger will be accessed the \$300 illegal move in fee and also you need to provide the \$200 move in in fee.

I accept the \$200.00 move-in fee was charged by the strata and that such fees are permitted under s. 7(1)(f) of the Regulation. I further accept that the Landlord paid this fee and is entitled to its reimbursement by the Tenant. I find that the Landlord is entitled to this amount.

Looking to the \$300.00 illegal move-in fee, presumably the Tenant could have only moved-in by first obtaining the key from the Landlord such that it is difficult to find the Tenant is responsible for moving in outside of a scheduled time. I note the condition inspection report was conducted on November 30, 2020, the day before the start of the tenancy as set out in the tenancy agreement. I find that the Landlord is, at least, partially at fault for the breach of this strata bylaw such that the Tenant cannot be responsible for payment of the \$300.00 for moving in outside of the scheduled time. This portion of the Landlord's claim is dismissed without leave to reapply.

The next fine is set out in the letter of December 16, 2021, which explains it was imposed after the Tenant failed to respond with respect to the issue of an unleashed dog. I accept that the Tenant left his dog unleashed, did not respond, and that the \$200.00 fine was imposed. I further accept that the Landlord paid this amount and is entitled to claim its reimbursement from the Tenant. I find the Landlord has established his claim for this amount.

The following fine was set out in the letter of December 20, 2021 explains that the Tenant refused to provide access to the rental unit for pest treatment after notice was given by the strata. I accept that the this occurred as alleged by the Landlord and confirmed by the letter, that the Landlord paid the \$200.00 fine, and that the Landlord is entitled to its reimbursement from the Tenant. I find that the Landlord is entitled to this amount.

Finally, the strata imposed another \$200.00 fine, which as explained in the letter of May 18, 2022 was due to the Tenant permitting his dog to defecate on the common property. I accept that this occurred as alleged, that the Landlord paid the fine, and that the Landlord is entitled to its reimbursement from the Tenant. I find that the Landlord is entitled to this amount.

I accept that the Tenant was provided with a copy of the move-in condition inspection report. Upon review of the report, I find that the move-in inspection process set by s. 23 of the *Act* has been complied with such that extinguishment under s. 24 is not in issue. I further accept the Landlord's undisputed evidence that the Tenant did not attend the move-out inspection, despite having agreed to a scheduled time and a rescheduled time. I find that the Tenant's right to the security deposit is extinguished under s. 36(1) of the *Act*. I further note that the Tenant has not provided his forwarding address such that the 15-day claim or return deadline imposed by s. 38(1) of the *Act* has not technically been triggered.

I find that the Landlord has established a monetary claim as follows:

Cleaning Costs	\$350.00
Strata Move-in Fee	\$200.00
Strata Dog Leash Fine	\$200.00
Strata Non-Entry Fine	\$200.00
Strata Dog Defecation Fine	\$200.00
<b>TOTAL:</b>	<b>\$1,150.00</b>

I further find that the Landlord was largely successful in his application such that he is entitled to his filing fee. Pursuant to s. 72(1) of the *Act*, I order the Tenant pay the Landlord's \$100.00 filing fee.

Pursuant to s. 72(2) of the *Act*, I direct that the Landlord retain the security deposit of \$1,100.00 in partial satisfaction of the total owed by the Tenant.

### Conclusion

The Landlord has established monetary claims totalling \$1,150.00 under s. 67 of the *Act*.

The Landlord is entitled his filing fee of \$100.00 under s. 72(1) of the *Act*.

The Landlord shall retain the security deposit of \$1,100.00 pursuant to s. 72(2) of the *Act*.

Taking the above into account, I order the Tenant pay **\$150.00** to the Landlord (\$1,150.00 + \$100.00 - \$1,100.00).

It is the Landlord's obligation to serve the monetary order on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlord with 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: February 27, 2023

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Residential Tenancy Branch