



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, MNDL-S, FFL

### Introduction

On June 1, 2022, the Landlord applied for a Dispute Resolution proceeding 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 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Z.A. attended the hearing as an agent for the Landlord; however, the Tenant did not attend the hearing at any point during the 15-minute teleconference. At the outset of the hearing, I informed Z.A. that recording of the hearing was prohibited. As well, she 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 1:45 PM. Only a representative for 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 I was the only other person who had called into this teleconference.

Z.A. advised that the Tenant was served with the Notice of Hearing and evidence package on June 13, 2022, by registered mail (the registered mail tracking number is noted on the first page of this Decision). As well, a copy of the tracking slip was

submitted to corroborate service. She testified that this package was returned to sender on July 7, 2022. Based on his solemnly affirmed testimony, I am satisfied that the Tenant was deemed to have received the Landlord's Notice of Hearing and evidence package five days after it was mailed. As such, I have accepted this evidence and will consider it 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 these debts?
- 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.

Z.A. advised that the tenancy started on September 1, 2021, as a fixed-term tenancy of one year, ending on August 31, 2022. However, the Tenant gave up vacant possession of the rental unit on May 17, 2022, when he abandoned it. Rent was established at \$1,800.00 per month and was due on the first day of each month. A security deposit of \$900.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence for consideration.

She stated that a move-in inspection report was conducted with the Tenant on August 30, 2021. As well, she testified that the Tenant was not present on May 20, 2022, for a move-out inspection as the Tenant abandoned the rental unit. A copy of the move-in and move-out inspection report was submitted as documentary evidence for consideration. In addition, she noted that the Tenant provided his forwarding address in an email to the Landlord, dated May 26, 2022. She cited this documentary evidence and

testified that the Notice of Hearing and evidence package was sent to this address accordingly.

She then advised that the Landlord was seeking compensation in the amount of **\$1,800.00** for May 2022 rent as the Tenant's pre-authorized debit for the rent did not go through. As such, the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent. She referenced the rent ledger that was submitted as documentary evidence to support the Landlord's position that this was not paid.

She advised that the Landlord was also seeking compensation in the amount of **\$25.00** for the NSF fee for this late payment of May 2022 rent. She referenced the tenancy agreement, which indicated that this amount could be charged in this instance.

As well, she advised that the Landlord was also seeking compensation in the amount of **\$196.00** because the Tenant did not adequately clean the rental unit and leave it in a re-rentable state at the end of the tenancy. She referenced the invoice submitted to outline the areas that required cleaning, and to support the cost of this claim.

Finally, she advised that the Landlord was seeking compensation in the amount of **\$100.00** for the cost of repainting and repairing damage to the walls caused by the Tenant. She testified that there were touch ups that needed to be dealt with to return the rental unit to a re-rentable state. She referenced the invoice submitted to support the cost of fixing this damage.

### 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 the undisputed evidence is that a move-in inspection report was conducted and signed by both parties, and that the Tenant was not present on May 20, 2022, because he had abandoned the rental unit days earlier, I am satisfied that the Landlord complied with the requirements of the *Act* in completing these reports. As such, I find that the Landlord has not extinguished the right to claim against the deposit.

Section 38 of the *Act* outlines how the Landlord must deal with the security 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 was provided on May 26, 2022, and the Landlord filed to claim against the deposit on June 1, 2022. As such, I am satisfied that the Landlord made this Application within 15 days of receiving the forwarding address. As the Landlord has not extinguished the right to claim against the deposit, 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 \$1,800.00 for May 2022 rent, the consistent and undisputed evidence before me is that the Tenant did not pay this rent. As such, I grant the Landlord a monetary award in the amount of **\$1,800.00** to satisfy this claim.

Regarding the Landlord's claim for compensation in the amount of \$25.00 for the cost of the NSF fee for May 2022 rent, as this charge was permitted pursuant to the tenancy agreement, I grant the Landlord a monetary award in the amount of **\$25.00** to remedy this matter.

With respect to the Landlord's claim for compensation in the amount of \$196.00 for the cost to clean the rental unit and return it to a re-rentable state, the consistent and

undisputed evidence before me is that the rental unit required cleaning at the end of the tenancy and those deficiencies were noted on the move-out inspection report and the invoice. As such, I am satisfied that the Landlord has provided sufficient documentary evidence to substantiate that the Tenant did not adequately clean the rental unit. Consequently, I grant the Landlord a monetary award in the amount of **\$196.00** to rectify this claim.

Finally, regarding the Landlord's claim for compensation in the amount of \$100.00 for the cost of repainting and repairing damage to the walls, based on the consistent and undisputed evidence before me, I am satisfied that the Landlord has provided sufficient documentary evidence to substantiate that the Tenant was negligent for this damage. As such, I grant the Landlord a monetary award in the amount of **\$100.00** to satisfy 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.

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**

May 2022 rent	\$1,800.00
May 2022 NSF fee	\$25.00
Cleaning	\$196.00
Repainting and repairing walls	\$100.00
Recovery of filing fee	\$100.00
Security deposit	-\$900.00
<b>TOTAL MONETARY AWARD</b>	<b>\$1,321.00</b>

#### Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$1,321.00** 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: February 13, 2023

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Residential Tenancy Branch