



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      **MNRL-S MNDCL-S FFL**

### Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”). The Landlord applied for the following:

- a monetary order for unpaid rent owed by the Tenant pursuant to section 67;
- an order for compensation for monetary loss or other money owed by the Tenant to the Landlord pursuant to section 67;
- authorization to keep the Tenant’s security deposit pursuant to section 38;
- and
- authorization to recover the filing fee for the Application from the Tenant pursuant to section 67.

An agent (“TE”) and the Tenant attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure*. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

TE stated the Landlord served the Notice of Dispute Resolution and its evidence (collectively the “NDRP Package”) on the Tenant by registered mail on August 30, 2022. TE provided the Canada Post tracking number for service of the NDRP Package on the Tenant. I find the NDRP Package was served on the Tenant in accordance with the provisions of sections 88 and 89 of the Act.

The Tenant did not submit any evidence for these proceedings.

### Issues to be Decided

Is the Landlord entitled to:

- a monetary order for unpaid rent owed by the Tenant?
- an order for compensation for monetary loss or other money owed by the Tenant?
- to keep the Tenant's security deposit?
- recover the filing fee for the Application from the Tenant?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

TE submitted into evidence a copy of the signed tenancy agreement, together with the addenda, between CVA and the Tenant. TE stated the Landlord was the agent for CVA. The parties agreed the tenancy commenced on November 1, 2021, for a fixed term ending October 31, 2022. The Tenant was required to pay a security deposit of \$905.00 by November 15, 2021. The parties agreed the tenancy agreement stated the Tenant was required to pay liquidated damages of \$500.00 if the Tenant ended the tenancy prior to the end of the fixed term and that this provision did not preclude the Landlord from claiming future rental revenue losses. The parties agreed the agreement provided the Landlord may charge \$25.00 for late payment of rent. TE stated the Tenant paid the security deposit and that the Landlord was holding it in trust for the Tenant.

TE submitted into evidence a signed letter ("Vacate Notice") from the Tenant dated July 15, 2023 in which the Tenant stated she was vacating the rental unit on July 29, 2022. The Tenant confirmed she served the Vacate Notice on the Landlord. The parties agreed the Tenant vacated the rental unit on July 29, 2022.

TE submitted into evidence a copy of the move-in inspection report dated October 18, 2021 that was signed by the Tenant. TE submitted into evidence a copy of the move-out inspection report dated July 29, 2022 that was signed by the Tenant. The Tenant provided her forwarding address on the move-out inspection report.

TE stated the Tenant paid the rent for July 2022 but the payment was returned NSF. TE stated the Landlord was seeking \$1,210.00 and \$25.00 for a late fee as the payment for July's rent was returned NSF. TE stated the Landlord re-rented the rental unit for October 1, 2022. TE stated the Landlord was seeking compensation for August and September 2022. The Landlord did not provide any evidence it had advertised the rental unit within a reasonable period of time after the Landlord received the Vacate Notice or that the rental unit required repairs after the Tenant vacated the rental unit. The Landlord did not provide a copy of the tenancy agreement with the new tenants of the rental unit.

### Analysis

Rule 6.6 Residential Tenancy Branch Rules of Procedure ("RoP") states:

#### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 37 of the Act states:

- 37(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement *must do whatever is reasonable to minimize the damage or loss.*

[emphasis in italics added]

Based on the foregoing, the Landlord must prove it is more likely than not that the Tenant breached section 37(2) of the Act, that it suffered a quantifiable loss as a result of this breach, and that it acted reasonably to minimize its loss.

*Residential Tenancy Branch Policy Guideline 16* ("PG 16") addresses the criteria for awarding compensation. PG 16 states in part:

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. 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.

These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the Residential Tenancy Act for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Accordingly, the Landlord must provide sufficient evidence that the four elements set out in PG 16 have been satisfied. However, before I can consider the Landlord's testimony and evidence regarding the unpaid rent and damages claimed, I must firstly consider whether the Landlord complied with the requirements for performance of a move-in and move-out condition inspection reports pursuant to sections 23 and 35 of the Act.

Sections 23, 24, 35, 36, 38(1), 36(6) and 38 of the Act state:

- 23(1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*
  - (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
    - (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
    - (b) a previous inspection was not completed under subsection (1).
  - (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
  - (4) *The landlord must complete a condition inspection report in accordance with the regulations.*
  - (5) *Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*
  - (6) The landlord must make the inspection and complete and sign the report without the tenant if
    - (a) the landlord has complied with subsection (3), and
    - (b) the tenant does not participate on either occasion.
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- 24(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
    - (a) the landlord has complied with section 23 (3) [2 opportunities for inspection], and
    - (b) the tenant has not participated on either occasion.
  - (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
    - (a) does not comply with section 23 (3) [2 opportunities for inspection],
    - (b) *having complied with section 23 (3), does not participate on either occasion, or*
    - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

- 35(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
  - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
  - (b) the tenant has abandoned the rental unit.
- 36(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and
  - (b) the tenant has not participated on either occasion.
- (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 35 (2) *[2 opportunities for inspection]*,
  - (b) having complied with section 35 (2), does not participate on either occasion, or
  - (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

- 38(1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*
- (a) the date the tenancy ends, and*
  - (b) the date the landlord receives the tenant's forwarding address in writing,*
- the landlord must do one of the following:*
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
  - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*
- [...]
- (6) If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[emphasis in italics added]

The move-in and move-out inspection reports were signed by the Tenant. The Tenant provided her forwarding address on the move-out inspection report that was completed on July 29, 2022. As such, I find the Landlord's right to claim against the Tenant's security deposit was not extinguished by either section 24(1) or 36(1) of the Act. The Landlord received the Tenant's forwarding address on July 29, 2022. Pursuant to section 38(1), the Landlord had until August 13, 2022, being the next business day after expiry of the 15-day period permitted by section 38(1) of the Act, to make an application to seek damages against the security deposit. The records of the Residential Tenancy Branch indicate the Landlord made the Application on August 12, 2022. As such, the Landlord made the Application within the 15-day period for making an application. As such, I find the Landlord complied with the requirements of section 38(1) of the Act.

The parties agreed the Tenant vacated the rental unit on July 29, 2022. TE stated the Tenant's payment for the July was returned NSF. TE stated the Landlord was seeking recovery of the unpaid rent of \$1,810.00 for July 2022, \$25.00 for the NSF payment and \$500.00 for liquidated damages provided for in the tenancy agreement. TE stated the Landlord re-rented the rental unit for October 1, 2022. TE stated the Landlord was also seeking \$3,620.00 for loss of revenue for the months of August and September 2022.

The parties agreed the Tenant's payment for the July rent was returned NSF. The Landlord did not provide any evidence it had advertised the rental unit within a reasonable period of time after the Landlord received the Vacate Notice or that the rental unit required repairs after the Tenant vacated the rental unit. The Landlord did not provide a copy of the tenancy agreement with the new tenants of the rental unit.

Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, that it is entitled to recover \$1,810.00 for unpaid rent for July 2022 and \$25.00 for the NSF payment. I also find the Landlord has proven, on a balance of probabilities, that it is entitled to recover \$500.00 for liquidated damages provided for in the tenancy agreement as a result of the Tenant breaching the tenancy agreement by ending the tenancy prior to the end of the fixed term on October 31, 2022.

TE could not recall the rent charged to the new tenants and the Landlord did not provide a copy of the tenancy agreement for the new tenants. TE did not provide any testimony or submit any evidence that the rental unit required repairs as a result of damage caused by the Tenant or Tenant's guests or that the Landlord took any steps to advertise the rental unit within a reasonable period of time after the Tenant gave the Vacate Notice. As such, I find the Landlord has not proven, on a balance of probabilities, that it minimized the damage or loss as required by section 37(2) of the Act. As such, I find the Landlord is not entitled to recover any compensation for loss of revenue for the months of August and September 2022.

Based on the foregoing, I find the Tenant is responsible for paying the Landlord \$2,335.00, calculated as follows:

<b>Reason</b>	<b>Amount</b>
Unpaid Rent for July 2022	\$1,810.00
Late Payment Fee	\$25.00
Liquidated Damages	\$500.00
<b>Total:</b>	<b>\$2,335.00</b>

Pursuant to section 67 of the Act, I order the Tenant to pay the Landlord \$2,335.00.

Pursuant to section 72(2)(b), the Landlord may deduct the \$905.00 from the Tenant's security deposit leaving a balance of \$1,430.00,

As the Landlord has been substantially successful in the Application, I order the Tenant pay the Landlord \$100.00 for the filing fee of the Application pursuant to section 72 of the Act.



Conclusion

I order the Tenant to pay the Landlord \$1,530.00 calculated as follows:

<b>Reason</b>	<b>Amount</b>
Unpaid Rent for July 2022	\$1,810.00
Late Payment Fee	\$25.00
Liquidated Damages	\$500.00
Filing Fee for Application	\$100.00
Less: Tenant's Security Deposit	\$905.00
<b>Total:</b>	<b>\$1,530.00</b>

The Landlord must serve the Monetary Order on the Tenant 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: May 8, 2023

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Residential Tenancy Branch