



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDL-S, MNDCL-S, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord August 26, 2023, under the *Residential Tenancy Act* (the Act), seeking:

- Recovery of costs incurred to repair damage to the rental unit;
- Compensation for monetary loss or other money owed;
- Retention of the deposits; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 pm on May 23, 2023, and was attended by the Landlord and their agent AB (Agent). All testimony provided was affirmed. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another, and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that recordings of the proceedings are prohibited and confirmed that they were not recording the proceedings.

The Residential Tenancy Branch Rules of Procedure (Rules of Procedure) state that respondents must be served with a copy of the Application for Dispute Resolution, the Notice of Hearing, and any evidence intended to be relied upon by the applicant. As the Tenants did not attend the hearing, I confirmed service of these documents as follows. The Landlord and Agent testified that on September 15, 2022, the Notice of Dispute Resolution Proceeding (NODRP), which contains the Application and the Notice of Hearing, and the documentary evidence, was sent to the Tenants by email using the

email addresses agreed to for service. The Landlord submitted completed and signed #RTB-51 forms, one for each Tenant, indicating that email was an agreed to method of service and providing the email addresses to be used for service. Based on the above, and as there is no evidence or testimony before me to the contrary, I find that the Tenants were deemed served with the above noted documents on September 18, 2022, pursuant to sections 88(j) and 89(1)(f) of the Act, sections 43 and 44 of the regulation, and Policy Guideline #12.

Residential Tenancy Branch (Branch) records show that the NODRP was emailed to the Landlord on September 13, 2022. As I am satisfied that it was emailed to each of the Tenants at their pre-agreed email addresses for service on September 18, 2022, I find that the NODRP was served in accordance with section 59(3) of the Act and rule 3.1 of the Rules of Procedure. I verified that the hearing information contained in the NODRP was correct and note that the Landlord and their Agent were able to attend the hearing on time using this information. As a result, the hearing proceeded as scheduled pursuant to rules 7.1 and 7.3 of the Rules of Procedure, despite the absence of the Tenants or an agent acting on their behalf. Although the teleconference remained open for the 22-minute duration of the hearing, no one attended on behalf of the Tenants.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

### Preliminary Matters

The Landlord and their Agent sought to amend the Application at the hearing to include additional months of lost rent and money owed, as they were unsure how to amend the Application in advance of the hearing. However, I declined to amend the Application at the hearing pursuant to rule 4.2 of the Act, as I was not satisfied that the Tenants could have reasonably anticipated either the nature or the amounts of the amendments. Further to this, I was satisfied that the Landlord could have amended the Application by completing, filing, and serving the Tenants with an Amendment to the Application for Dispute Resolution, in compliance with the Rules of Procedure, had they wished to add these additional claims and amounts to the Application.

### Issue(s) to be Decided

Is the Landlord entitled to recovery of costs incurred to repair damage to the rental unit?

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Landlord entitled to withhold the deposits?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The Landlord and the Agent stated that the tenancy ended on July 31, 2022, due to a mutual agreement to end the tenancy, and that move-in and move-out condition inspections were scheduled and completed in accordance with the Act and the regulation. The Landlord and the Agent stated that rent in the amount of \$2,200.00 was due under the tenancy agreement at the time the tenancy ended, that the tenancy was periodic in nature at that time, and that a security deposit and a pet damage deposit in the amount of \$1,100.00 each was paid by the Tenants, which the Landlord still holds in trust.

The Landlord and the Agent stated that on the day of the scheduled move-out inspection, the Tenants repeatedly asked to delay the time of the inspection, and they obliged. The Landlord and Agent stated that when they returned for the condition inspection at 6:30 pm, after several earlier requests to delay, the Tenants had left and abandoned the rental unit in a state of disrepair and uncleanness. The Landlord and Agent stated that the Tenants failed to leave the rental unit reasonably clean and undamaged, except for pre-existing damage and reasonable wear and tear, or to return the keys to the rental unit at the end of the tenancy, as required by section 37(2) of the Act, or to provide them with a forwarding address in writing. The Landlord and the Agent stated that the Landlord therefore incurred \$23,661.13 in losses because of the Tenants' breach to section 37(2) of the Act for:

- Repairs to the rental unit walls, doors, and blinds;
- Repairs to flooring damaged by the Tenants and their pets;
- The rekeying of locks;
- Unexpected overnight accommodations due to the Tenants' repeated requests to delay the move-out inspection on the last day of the tenancy;
- Plumbing repairs;
- Junk removal;
- 10 hours of cleaning;
- The replacement of a broken dishwasher;

- Two months of lost rental income; and
- Recovery of the filing fee.

Documentary evidence including but not limited to the following was submitted for my review:

- Videos;
- Photographs;
- Quotes;
- Invoices;
- Condition inspection reports;
- Copies of correspondence;
- Written submissions;
- A mutual agreement to end tenancy effective July 31, 2022;
- #RTB-51's – Address for service documents; and
- The tenancy agreement.

### Analysis

#### **Is the Landlord entitled to recovery of costs incurred to repair damage to the rental unit and compensation for monetary loss or other money owed?**

Based on the compelling uncontested documentary evidence before me and the affirmed testimony of the Landlord and Agent, I am satisfied that the Tenants failed to leave the rental unit reasonably clean and undamaged at the end of the tenancy, except for pre-existing damage and reasonable wear and tear, and to return the keys to the rental unit as required by section 37(2) of the Act. I also accept the undisputed documentary evidence and testimony that the Tenants' breach of section 37(2) of the Act cost the Landlord not less than \$23,561.13. Pursuant to section 7 of the Act, I therefore grant the Landlord recovery of this amount.

#### **Is the Landlord entitled to withhold the deposits?**

I accept the undisputed affirmed testimony of the Landlord and Agent that they complied with the requirements of the Act and regulation regarding the scheduling of the condition inspections, the completion of the inspection reports, and the provision of copies of the inspection reports to the Tenants. As a result, I find that the Landlord has not extinguished their rights in relation to the deposits. As the Landlord and Agent stated that the Tenants have not yet provided a forwarding address in writing, I find that the

deadline set out under section 38(1) of the Act has not yet been triggered. Regardless, I am also satisfied that the Tenants extinguished their rights to the return of their deposits pursuant to section 36(1) of the Act, by failing to attend and participate in a properly scheduled move-out condition inspection.

I therefore grant the Landlord authorization to withhold the \$2,200.00 in deposits, plus \$16.96 in interest, towards the above noted amounts owed, pursuant to section 72(2)(b) of the Act.

**Is the Landlord entitled to recovery of the filing fee?**

As the Landlord was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act.

Conclusion

Pursuant to section 67 of the Act, I grant the Landlords a monetary order in the amount of **\$21,444.17**. The Landlord is provided with this order in the above terms and the Tenants must be served with this order as soon as possible. Should the Tenants fail 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 Branch under Section 9.1(1) of the Act.

Dated: May 24, 2023

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Residential Tenancy Branch