



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

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

### **Introduction**

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38;
- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38;
- An order to be compensated for a monetary loss or other money owed and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both parties attended the hearing. They each had full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the application and evidence. Based on the testimonies I find that each party was served with these materials as required under RTA sections 88 and 89.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure (“Rules”) and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an affirmation to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation for damages and/or rent?

Can the landlord retain the tenant's security deposit?

Can the landlord recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord seeks compensation from the tenants from a very short 3 day tenancy. When the tenants "abandoned" the unit, they didn't provide the landlord with a full month's notice, leaving the landlord unable to pay her mortgage, taxes and utilities. Further, the landlord claims the tenants damaged the door frame and the lock mechanism of the front door. Lastly, although the landlord's application indicates a further claim for \$1,600.00, the landlord testified that this portion of the claim was simply a request to retain the tenants' \$1,600.00 security deposit.

The tenants provided a contradictory recollection of events leading to them to be required to vacate the rental unit shortly after moving in. The tenants deny there was any damage done to the landlord's door. The reason for not moving in was due to the landlord's irrational behaviour.

A copy of the tenancy agreement signed on July 7, 2022 was provided as evidence. The parties agree that the tenancy was to commence on July 10<sup>th</sup> with the tenants paying pro-rated rent of \$2,000.00 for the month of July. The landlord collected a \$1,600.00 security deposit and she continues to hold it. Keys were exchanged on July 7<sup>th</sup>, although the parties disagree on when the tenancy was to commence.

The landlord testified that she tried to do a condition inspection report with the tenants on July 10<sup>th</sup> but the tenants didn't want her in the suite. According to the landlord, when she came, she saw dog feces on the property and signs of cannabis use. She also

noticed the tenants weren't using anything to protect the floors when moving in, so she got some sheets to put down on the floors.

The tenant testified that on July 7<sup>th</sup>, the landlord gave her permission to have Telus come in and hook up her internet and cable on Saturday, July 9<sup>th</sup>. The landlord approved of the tenant moving in some boxes early, as well. When the tenants were moving in on Sunday, July 10<sup>th</sup>, the landlord was there and threw the sheets at her angrily. The landlord and the tenant yelled at one another and the tenants discontinued moving in. The police were called to intervene.

According to the tenant, when her son, the co-tenant came back to the unit on Monday July 11<sup>th</sup>, the landlord had changed the locks. On that same day, the landlord placed an advertisement looking for a new tenant. Neither party provided a copy of the advertisement, however both parties agree that this happened.

The tenant testified that her son began to look for other places to rent once he was locked out. They were successful in finding another rental for the remainder of July and didn't continue moving into the landlord's unit.

The landlord countered, saying the tenants had moved in early without her permission. The landlord claims the tenant must have tried to forcefully open the door and in doing so, broke the frame. The landlord did not provide any receipts for the materials or labour to fix the door, however she seeks \$650.00 as compensation.

The landlord claims for August's rent as she was unable to rent it for that month. It takes over an hour to get from her residence to the rental unit, making showings very inconvenient for the landlord. The landlord testified that no potential renter could start a tenancy until the first of September.

### Analysis

Section 16 of the Act states that the rights and obligations of a Landlord and the Tenants under a Tenancy Agreement take effect from the date the Tenancy Agreement is entered into, whether or not the Tenants ever occupy the rental unit.

I find that a tenancy began on July 10, 2023. The parties have different recollections on whether the tenants were allowed to be on the property prior to that date, however I accept the tenant's recollection that the landlord permitted her to have Telus come in on Saturday, July 9<sup>th</sup> to install services.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

While the landlord claims the tenants abandoned the rental unit; I find the evidence does not support this claim. The landlord changed the locks to the rental unit and in doing so, she effectively denied the tenants the ability to continue moving in. Section 31 of the Act states that a landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property. Although the landlord may have felt justified in doing so, the tenants paid pro-rated rent from July 10<sup>th</sup> to the end of July and had a legal right to occupy the unit. The landlord had no right under the legislation to change the locks.

As the tenants were prevented from continuing to move in, I find the landlord has not proven that the tenants breached a term of the tenancy agreement leading to a loss for her. The loss of rental income for the month of August was not caused by the tenants due to abandonment but by the landlord when she changed the locks without the right to do so. I dismiss the portion of the landlord's claim seeking a month's rent for failure to give proper notice.

Regarding the landlord's claim of damage to the front door and front door frame, I find the landlord has not successfully proven the existence of the damage and has not provided evidence to verify the monetary amount of the loss she seeks.

Section 21 of the Residential Tenancy Regulations states that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

While the landlord testified that the door and door frame were new, I do not have a condition inspection report to provide me with both parties' agreement as to the allegedly new condition of it when the tenancy began. Based on the photo of the door

provided by the landlord it appears there was pre-existing damage to it, as the crack on the black door appears to have been painted over with a blue toned paint.

Further, the landlord did not provide any receipts for the materials purchased, or labour she seeks to recover for the repair to the door and frame. Consequently, I find the landlord has not provided the evidence needed to verify the monetary amount she seeks. This portion of the landlord's claim is dismissed without leave to reapply.

Section 38 requires that the landlord must repay the security deposit or make an application for dispute resolution claiming against it within 15 days after the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. The parties agree that the tenant didn't provide a forwarding address to the landlord until it was exchanged together with evidence for this hearing. As such, I order that the landlord return the tenant's full security deposit of \$1,600.00 in accordance with section 38 as her claim against the security deposit was denied.

#### Conclusion

The application is dismissed without leave to reapply.

The landlord is to return the tenants' security deposit of \$1,600.00. I issue a monetary order against the landlord in the amount of \$1,600.00 pursuant to section 38 of the Act.

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 10, 2023

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Residential Tenancy Branch