



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### Dispute Codes

File #910097293: MNRT, MNDCT, MNSD, RPP

File #910098509: MNRL-S, MNDL-S, MNDCL-S, FFL

### Introduction

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

- an order pursuant to ss. 33 and 67 to be paid back the cost for emergency repairs;
- a monetary order pursuant to s. 67 for compensation or other money owed;
- an order pursuant to s. 38 for the return of the security deposit and/or the pet damage deposit; and
- an order pursuant to 65 and 67 for return of personal property.

The Landlord files his own application seeking the following relief under the *Act*:

- a monetary order pursuant to ss. 38 and 67 seeking compensation for unpaid rent by claiming against the deposit;
- a monetary order pursuant to ss. 67 and 38 to pay for repairs caused by the tenant during the tenancy by claiming against the 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.

O.L. appeared as the Tenant. K.K. appeared as the Landlord. The Landlord was represented by counsel, A.F.. R.L. was called as a witness by the Landlord.

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 Tenant advised that he posted his application to the Landlord's door, though did not specify when he did so. The Landlord denies receiving any documentation from the Tenant.

Section 89 of the *Act* establishes the methods by which an application for dispute resolution is to be served. Specifically, s. 89(1) of the *Act* applies here and it does not permit service of an application by posting it to an individual's door.

The method described by the Tenant is not permitted by s. 89(1) of the *Act*. Further, the Landlord specifically denies receipt. Under the circumstances, I am unable to make a finding that the Tenant's application was properly served. Accordingly, I dismiss the Tenant's application with leave to reapply as it was not properly served.

The Landlord applied for and obtained an order for substitutional service permitting service via email. I am told that the Landlord's application and evidence was sent to the Tenant's email, which the Tenant acknowledges receiving. I find that the Landlord served his application materials in accordance with s. 89 of the *Act*.

#### Issues to be Decided

- 1) Is the Landlord entitled to an order for unpaid rent and utilities?
- 2) Is the Landlord entitled to compensation for damage to the rental unit?
- 3) Is the Landlord entitled to compensation for other loss?
- 4) Is the Landlord entitled to claim against the security deposit?
- 5) Is the Landlord entitled to his filing fee?

#### Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

### *General Background*

The parties confirm the following details with respect to the tenancy:

- The Tenant moved into the rental unit on February 1, 2020.
- The Tenant moved out of the rental unit, with the Tenant saying it was on November 25, 2022 and the Landlord saying it was on December 1, 2022.
- Rent of \$4,200.00 was due on the first of each month.
- A security deposit of \$2,100.00 was paid by the Tenant.

I am provided with a copy of the tenancy agreement by the Landlord.

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.

### *Landlord's Claim for Unpaid Rent and Utilities*

Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent.

In this instance, I am advised by Landlord's counsel that the Tenant failed to pay rent for November 2022. I note that the Tenant's application was filed in response to another application filed by the Landlord, the file number for which is listed on the cover page of this decision. In that other matter, the Tenant was ordered to pay rent for September and October 2022.

The Tenant confirms he did not pay rent for November 2022 but says that this was because he had an agreement to stay in the rental unit until January 2023. Landlord's counsel provided submissions that the parties had entered into a mutual agreement to end tenancy such that the Tenant was to leave by November 25, 2022, though did not actually leave until December 1, 2022. The Landlord's evidence contains a copy of this mutual agreement.

I find that the Landlord has established that the Tenant failed to pay rent for November 2022 in breach of the tenancy agreement and s. 26 of the *Act*. I further find that the Landlord has suffered a loss of rental income for that month, which could not have been mitigated as the Tenant continued to reside within the rental unit. Accordingly, I find that the Landlord has established a monetary claim for unpaid rent totalling \$4,200.00.

The Landlord also seeks the reimbursement of utilities. Landlord's counsel submits that pursuant to an addendum signed by the parties the Tenant was to pay utilities, namely hydro and gas, for the rental unit. The Landlord's evidence includes a copy of the handwritten addendum indicating the Tenant was responsible for electricity and gas.

Landlord's counsel submits that the Landlord is seeking compensation for utilities he paid for the rental unit in the month of November 2022 as these had been unpaid, namely \$122.23 for hydro and \$177.48 for gas. The Landlord's monetary order worksheet describes this as prorated up until December 1, 2022. I am provided with copies of the utility statements, which counsel explains were prorated for the date range set out in the monetary order worksheet.

The Tenant confirms he was responsible for paying utilities.

I find that the Tenant breached his obligation to pay utilities as per the addendum of the tenancy agreement. I find that the Landlord suffered a loss because of the breach and is entitled to compensation as mitigation was not possible under the circumstances.

I accept that the Tenant did complete his move-out on December 1, 2022, upon review of the correspondence provided to me by the Landlord. I have also reviewed the utility statements provided to me. With respect to the natural gas, prorated daily consumption from November 15, 2022 to December 1, 2022 was \$163.98.

The Tenant's evidence calculates \$122.23 for hydro based on consumption over those dates, however, the same utility statement shows average usage of \$4.01 per day over the billing period and stepped rates for energy consumption. I prefer calculating the total owed on a per day basis, as was done with the natural gas, such that the total owed for hydro from November 8, 2022 to December 1, 2022 is \$92.23.

I find that the Landlord is entitled to compensation for the utilities in the amount of \$256.21.

*Landlord's Claim for Compensation for Damage to 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. Policy Guideline 1 defines reasonable wear and tear as the "natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion."

The Landlord provides me a copy of a move-out inspection report and acknowledges that no written move-in inspection report had been conducted. The move-out inspection was conducted without the Tenant. According to the Landlord, the rental unit had undergone renovations immediately prior to the Tenant moving in such that it was in new condition.

The Landlord seeks \$682.50 for repairs to the flooring at the rental unit. I have been provided with an invoice for this amount. I am also provided with photographs, which show that there were scratches in the laminate flooring. The Tenant argued that the tenancy was for nearly three years such that some damage is to be expected through normal use.

I have reviewed the photographs provided and accept that these are the result of normal wear and tear. It is expected that through normal use, flooring may be scratched. There is no suggestion that the damage occurred from anything other than normal use of the property by the Tenant.

I dismiss this portion of the Landlord's claim without leave to reapply.

The Landlord also seeks the costs for cleaning the rental unit in the amount of \$650.00. The photographs provided by the Landlord shows that items were left behind by the Tenant at the rental unit and were otherwise unclean. The Landlord's property manager, R.L., says she conducted the move-out inspection and noted that in her opinion, the rental unit had not been adequately cleaned by the Tenant.

The Tenant says he hired someone to clean the rental unit before he left. He further says that certain items were left behind as he had insufficient time to retrieve them before the end of the tenancy.

I accept that the rental unit was unclean, as the photographs provided clearly demonstrate various items were left about the property and that if anything had been cleaned, it was not done to a standard that would be acceptable for a prospective tenant to move into the rental unit. I find that the Landlord has established the Tenant breached s. 37(2) of the *Act*.

The Landlord advises that he hired a private cleaning person and paid them \$650.00 to clean the rental unit. The Landlord's evidence includes a screenshot of a text message and e-transfer showing the payment. I accept that the Landlord did pay this amount to clean the rental unit after the Tenant had vacated. Accordingly, I find that the Landlord has established a monetary claim for cleaning the rental unit totalling \$650.00.

#### *Landlord's Claim for Disposal of Tenant's Personal Property*

The Landlord also seeks the cost of trash removal at the property. The Landlord provides a receipt for their removal totalling \$1,930.01, which according to the invoice was for left over items at the property, trash, a trampoline, and boxes from a carport.

Review of the photographs shows that some of the items disposed of is clearly garbage left behind by the Tenant. However, some of the items do not appear to be. I note that Part 5 of the Regulation establishes a procedure for disposing of abandoned personal property and only permits disposal, as appears to have occurred here, under circumstances described in s. 25(2).

The Landlord provided no submissions to support that the circumstances under s. 25(2) of the Regulation are applicable. A letter from the Landlord's counsel to the Tenant, dated November 30, 2022, makes a demand that the personal property be removed by December 4, 2022. Despite the demand, a landlord is still obliged to comply with their

obligations under Part 5 of the Regulation with respect to personal property abandoned by a tenant.

I note that the Tenant's application does claim for return of personal property. Though I am not adjudicating that claim as it was not served, I note that how the Landlord dealt with the Tenant's personal property at the end of the tenancy is likely to be subject to further hearing.

I am reluctant to grant the Landlord's relief for the disposal expense as it may have been incurred in contravention of his obligations under Part 5 of the Regulation. Considering this and given the issue raised in the Tenant's application, I find this portion of the Landlord's claim would be better dealt with on its own when the question of the Tenant's personal property claim is advanced, if ever.

Accordingly, I dismiss this portion of the Landlord's claim with leave to reapply. I make no findings on whether the Landlord complied with Part 5 of the Regulation or any associated issues with the disposal of the Tenant's personal property.

#### *Landlord's Right to Claim Against the Security Deposit*

I am advised by Landlord's counsel that the Tenant has not provided a forwarding address. I accept that this is true as the Landlord sought and obtained an order for substitutional service on this application due to a want of forwarding address.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. In this instance, as no forwarding address was provided, I accept that the Landlord did file his application against the deposits in accordance with s. 38(1) of the *Act* such that the doubling provision under s. 38(6) of the *Act* does not apply.

#### *Summary*

The Landlord has established entitlement to the following amounts:

Rent for November 2022	\$4,200.00
Utilities for November 2022	\$256.21

Cleaning Costs

\$650.00

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

The Landlord's total monetary claim is \$5,106.21. Pursuant to s. 72(2) of the *Act*, I direct that the Landlord retain the security deposit of \$2,100.00 in partial satisfaction of this amount, such that the Tenant owes the Landlord \$3,006.21.

### Conclusion

Pursuant to s. 67 and 72 of the *Act*, I order that the Tenant pay **\$3,006.21** to the Landlord.

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 with the Small Claims Division of the Provincial Court and enforced as an order of that Court.

At the conclusion of the hearing, Landlord's counsel requested that the Landlord be permitted to serve any monetary order on the Tenant via email. I note that a substitutional order has already been granted on this matter such that I find that it is appropriate given the Tenant has not provided a forwarding address.

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 18, 2023

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Residential Tenancy Branch