



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding TAA HOLDING LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, MNSD, FFT  
                             MNRL-S, MNDCL-S, FFL

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on August 30, 2022. The Tenant applied for the return of their security deposit, compensation under for monetary loss or other money owed and the return of the filing fee.

The Landlord’s Application for Dispute Resolution was made on September 27, 2022. The Landlord applied for a monetary order for unpaid rent, for a monetary order for loss or other money owed, permission to retain the security deposit and to recover the filing fee.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties agreed that they have exchange the documentary and digital evidence that I have before me in these proceedings.

I have reviewed all the evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Tenant entitled to the return of their security deposit?
- Is the Tenant entitled to a monetary order for loss or other money owed under the *Act*?
- Is the Landlord entitled to monetary order for unpaid rent
- Is the Landlord entitled to monetary compensation for loss or other money owed under the *Act*?
- Is the Landlord entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?
- Is the Tenant entitled to recover the cost of the filing fee?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

While I have considered all of 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.

Both parties testified that the tenancy began on July 1, 2022, as a one-year fixed term tenancy that would roll into a month to month at the end of the initial fixed term. Rent in the amount of \$2,000.00 was to be paid by the first day of each month and that the Tenant had paid a security deposit in the amount of \$1,000.00 and a pet damage deposit in the amount of \$200.00 the outset of the tenancy. The Landlord submitted a copy of the tenancy agreement with a two-page addendum into documentary evidence.

The parties agreed that the Tenant move-out of the rental unit as of August 1, 2022. The Tenant testified that they sent the Landlord their forwarding address, in writing, by Canada Post registered mail, sent on August 8, 2022. The Landlord agreed that they received the Tenant forwarding address and the keys to the rental unit on August 11, 2022.

The Tenant submitted that no written move-in or move-out inspection report was completed by the Landlord for this tenancy.

The Landlord submitted that they did conduct a written move-in inspection on July 2, 2022, but that they did not conduct a move-out inspection with the Tenant at the end of

the tenancy. It was noted during these proceedings that a copy of the Landlord's written move-in inspection report was not submitted into documentary evidence.

The Landlord submitted that they did reach out by text to try and schedule the move-out inspection with the Tenant but that the Tenant would not respond to them. The Landlord testified that they did not make a final attempt to schedule the move-out inspection in writing. The Landlord also testified that they did conduct a move-out inspection but agreed that it was not completed in writing.

Tenant testified that they had to leave the rental unit as the unit was not a legal rental unit, and there were safety concerns with the unit, specifically, the gas connection to the rental unit was not installed properly nor had it been properly repaired after the Landlord was notified of the problem.

The Tenant submitted that they emailed the Landlord on July 25, 2022, stating that due to their concerns with the condition of the rental unit they would be moving out as of August 1, 2022.

The Landlord testified that they received the email from the Tenant stating that they would be leaving if the repairs were not completed. The Landlord testified that there were no safety issues with the rental unit, and that the unit is a legal rental unit. The Landlord testified that they had the gas lines inspected after the Tenant complained, and no problems were found.

Tenant testified that as the rental unit provided by the Landlord did not meet health and safety standards the Landlord should have to compensate them for their moving costs, consisting of a truck rental in the amount of \$800.00 and \$600.00 in storage costs as they were forced to move quickly to a smaller place. The Tenant submitted two bills into documentary evidence.

The Landlord testified that there was nothing wrong with the rental unit, that the Tenant was just not happy for some reason, and that the Landlord should not be responsible to cover the Tenant's moving costs.

The parties agreed that the Landlord had committed to getting the Tenant their own garbage can for weekly street collection, and that while the Tenant was waiting for the new garbage can to be delivered the Landlord would cover the costs of the Tenant buying garbage bag tags. The Tenant submitted that they are seeking to recover their

costs for two garbage bag tags in the amount of \$6.00. The Landlord agreed to pay the Tenant the requested \$6.00.

The Landlord testified that due to the Tenant's short notice to end the tenancy, just six days, that they suffered a loss in rental income for August 2022, in the amount of \$2,000.00. The Landlord requested to be awarded the rent for August for this tenancy.

Tenant testified that as the rental unit did not meet health and safety standards, they were justified in ending the tenancy quickly and that the Landlord is not entitled to the rent for August 2022.

The Landlord testified that the Tenant returned the rental unit to them uncleaned at the end of tenancy and requested \$150.00 to have the rental unit professionally cleaned. The Landlord testified that they did not include the bill for this cleaning in their documentary evidence submission.

The Landlord testified that the Tenant had not completed the yard work for the rental property as required under section nine of the addendum to their tenancy agreement. The Landlord requested the recovery of their costs to have the yard work completed in the amount of \$450.00. The Landlord submitted that the yard work was completed by them on July 31, 2023, and submitted a copy of the yard work bill and two pictures into documentary evidence.

The Tenant submitted that they had the yard work completed before they moved out.

The Landlord testified that the utility bills for this tenancy remain unpaid for July 2022. The Landlord submitted that the tenancy agreement addendum, section 5, required the Tenant to pay 40% of the utility bills for the rental property. The Landlord testified that they are requesting \$31.00 for outstanding fortis gas bills and \$122.03 for outstanding BC hydro bills. The Landlord submitted one fortis gas bill and one BC hydro bill into documentary evidence for the period of July 1 to July 11, 2022.

The Tenant agreed that they are required to pay 40% of the utilities for the rental property under their tenancy agreement.

### Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed the tenancy agreement signed by these parties, and I find that the Landlord and Tenant entered into a one-year fixed term tenancy that started on July 1, 2022, with an agreed-upon end of tenancy date of June 30, 2023.

I accept the agreed-upon testimony of these parties that the Tenant issued notice to the Landlord that they would be ending their tenancy early and moving out of the rental unit as of August 1, 2022.

Section 45(2)(b) of the *Act* states that a tenant cannot end a tenancy agreement earlier than the date specified in the tenancy agreement.

***Tenant's notice***

***45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that***

***(a) is not earlier than one month after the date the landlord receives the notice,***

***(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and***

***(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.***

I find that the Tenant breached section 45 of the *Act* when they ended this tenancy before the date specified in the tenancy agreement signed between these parties.

I acknowledge the Tenant's submission that the rental unit did not meet health and safety standards; however, I find that the parties, in this case, offered conflicting verbal testimony regarding the condition of the rental unit. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As the Tenant has claimed the rental unit did not meet health and safety standards, I find that it is the Tenant who holds the burden of providing sufficient evidence to substantiate this claim.

I have reviewed the submissions of the Tenant and I find that there is insufficient evidence to support the Tenant's claim that this rental unit did not meet health and safety standards.

The Landlord has requested the recovery of their lost rental income for August 2022, caused by the Tenant's short notice to end this tenancy. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"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. 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.

I find that the Tenant's breach of section 45 of the *Act* resulted in a loss of rental income to the Landlord for August 2022. I also find that the Landlord has provided sufficient evidence to prove the value of that loss and that they took reasonable steps to minimize the losses due to the Tenant's breach. Therefore, I find that the Landlord has established an entitlement to the recovery of the loss of rental income for August 2022. I award the Landlord their requested \$2,000.00 for the loss of August 2022 rent.

As for the security deposit for this tenancy, I accept the agreed-upon testimony of these parties that this tenancy ended on August 1, 2022 and that the Tenant provided their forwarding address to the Landlord on August 11, 2022. Section 38 of the *Act* sets the requirements on how a security deposit is handled at the end of a tenancy, stating the following:

***Return of security deposit and pet damage deposit***

***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.*

As it has already been determined that this tenancy ended on August 1, 2022, and that the Landlord received the Tenant's forwarding address on August 11, 2022, I find that the Landlord had until August 26, 2022, to comply with section 38(1) and file their claim against the security deposit.

I have reviewed the Landlord's application and noted that the Landlord filed their claim against the deposits for this tenancy on September 27, 2022; 32 days after the timeline to submit their application had expired.

Section 38(6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return the deposit within 15 days, the landlord must pay the tenant double the security deposit.

***Return of security deposit and pet damage deposit***

- 38 (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.*

Therefore, I find that pursuant to section 38(6b) of the *Act* the value of the deposits for this tenancy, has doubled in value to the amount of \$2,400.00, due to the Landlord's breach of the *Act*.

The Landlord has also claimed for \$753.03 in compensation, consisting of \$153.03 in unpaid utility bills, \$150.00 in cleaning costs, and \$450.00 for yard maintenance costs.

I accept the agreed-upon testimony of these parties, supported by the tenancy agreement, already in evidence, that the Tenant agreed to pay 40% of the utilities of the

rental property. I also accept the agreed-upon testimony of these parties the utility bills for July 2022, remained unpaid for this tenancy.

I find that the Tenant breached their tenancy agreement when they did not pay the utilities due for this tenancy and I find that this breach has resulted in a loss to the Landlord. However, I find that the Landlord has not provided sufficient evidence to prove the \$153.03 in unpaid utility bills that they have claimed in these proceedings. After reviewing the documentary submission of the Landlord, I find that the Landlord has provided sufficient evidence to prove a Fortis Gas bill loss of \$9.56 and a BC Hydro loss of \$47.24. Therefore, I award the Landlord the return of their proven utility bill losses for July 2022, in the amount of \$56.80.

The Landlord submitted that the Tenant returned the rental unit in an unclean state at the end of the tenancy and that they are claiming to recovery \$150.00 in cleaning costs. Section 37(2) of the *Act* requires that a tenant return the rental unit reasonably clean at the end of the tenancy. It was noted during these proceedings, that the Landlord did not submit a copy of the bill for cleaning into documentary evidence. As stated above, in order to be successful in a compensation claim, a party must prove the dollar value of the loss they suffered. Therefore, as Landlord has not provided any documentary evidence to show the cleaning costs they are claiming, I find that the Landlord has not provided sufficient evidence to prove the value of this loss and I dismiss this portion of the Landlord's claim in its entirety.

The last item on the Landlord's claim for the recovery of \$450.00 for yard maintenance costs at the end of the tenancy. However, I find that the parties have again offered conflicting verbal testimony during these proceedings, this time on the point of the condition of yard at the end of this tenancy. As stated above, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. On this point, it is the Landlord who holds the burden to provide sufficient evidence to substantiate their claim.

An Arbitrator normally looks to the move-in/move-out inspection report (the "inspection report") as the official document that represents the condition of the rental property at the beginning and the end of a tenancy; as it is required that this document is completed in the presence of both parties and is seen as a reliable account of the condition of the rental unit.



Section 35 of the Act states the following:

***Condition inspection: end of tenancy***

**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.*

It is the responsibility of the Landlord to ensure that the move-out inspection was completed as required. I accept the testimony of the Landlord that they did not complete a written move-out inspection for this tenancy. I find that the Landlord was in breach of section 35 of the Act by not completing the move-out inspection report for this tenancy.

***Consequences for tenant and landlord if report requirements not met***

**36** (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.*

Consequently, pursuant to section 36 (2) of the Act, I find that by not completing the move-out inspection report the Landlord had extinguished their right to make a claim against the deposits for damages or losses to the rental unit or property at the end of tenancy.

In the absence of a move-out inspection, I must rely on documentary evidence before me in determining this portion of the Landlord's claim. I have reviewed the picture

evidence submitted by the Landlord, and I find that these pictures show that the yard for this rental unit was in a well-maintained condition as of July 31, 2022, the day before this tenancy ended. Therefore, as Landlord has not provided sufficient evidence to show that the Tenant had not maintained the yard, I dismiss this portion of the Landlord's claim in its entirety.

I grant permission to the Landlord to retain \$2,056.80, from the double value of the security and pet damage deposit they are holding for this tenancy in full satisfaction of the awards contain in this decision

As for the Tenant's claims, in the amount of \$1,406.00, consisting of \$800.00 in moving costs for a truck rental, \$600.00 in storage costs and \$6.00 in garbage bag tags.

The Tenant has submitted that they are entitled to the recovery of their moving and storage costs as they were forced to end their fixed term tenancy early due to the rental unit being an illegal suite, and for safety reasons as the gas line to the rental unit was not installed correctly.

As it has already been determined above that the Tenant has not submitted sufficient evidence to substantiate these claims, I find that I must dismiss the Tenant's claims for \$800.00 in moving costs for a truck rental and \$600.00 in storage costs in their entirety.

During the hearing, the Landlord agreed to pay the Tenant the requested \$6.00 in garbage bag tags. Therefore, I award the Tenant the recovery of their requested costs of \$6.00 for garbage bag tags.

Finally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. In this case, both the Tenant and the Landlord have applied for the recovery of their filing fee. As both the Tenant and the Landlord have been found to have breached the Act during this tenancy, and due to these breaches on both sides of this case, I find that neither the Landlord nor the Tenant are entitled to recover the \$100.00 filing fee paid for their respective applications.

Overall, I grant the Tenant a monetary order of \$349.20, consisting of the return of the doubled value of the security and pet damage deposits for this tenancy in the amount of \$2,400.00, \$6.00 for garbage bag tags, and less the \$2,056.80 awarded to the Landlord in this decision.

Conclusion

I grant the Tenant a Monetary Order in the amount of \$349.20. The Tenant is provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord 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: June 29, 2023

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Residential Tenancy Branch