



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (the “Act”) for the following orders:

1. a monetary order for unpaid rent, pursuant to section 67
2. a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
3. authorization to keep the tenant’s security deposit to use against a monetary award; and,
4. authorization to recover the filing fee for this application, pursuant to section 72.

TS, the landlord and LT, the tenant appeared at the hearing.

As both parties were in attendance, I confirmed that there were no issues with service of the Notice of Dispute Resolution Proceeding package and evidence. In accordance with sections 88 and 89 of the Act, I find that both parties were served with the other’s application materials.

The parties were cautioned that recording of the hearing is prohibited pursuant to Rule of Procedure 6.11. The parties were given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent?

Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the landlord entitled to keep the tenant's security deposit to use against a monetary award?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

I have considered the documentary evidence and the testimony of the parties; however, not all of the details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agree that the fixed term tenancy began on April 15, 2022, by way of written tenancy agreement. Monthly rent was \$1,495.00 payable on the first of each month.

The landlord collected a security deposit in the amount of \$747.50 from the tenant, which the landlord continues to hold in trust. The landlord testified that the tenant vacated on September 2, 2022; however, the tenant testified that they did not complete the process of vacating the rental property until the afternoon of September 3, 2022.

The landlord testified that they are seeking \$1,495.00 in unpaid rent for the month of September 2022 because the tenant did not pay rent. The tenancy agreement was a fixed-term tenancy with an expiry date of May 2023 and the landlord was not provided with any notice that the tenant was moving out.

In response to the landlord's submissions, the tenant testified that they had to vacate the rental unit suddenly because they were no longer able to stay there. The tenant testified that they woke to find a bat in their bedroom and located animal droppings in the kitchen of the rental unit. The tenant further testified that an animal attempted to enter the kitchen through the kitchen cabinets in the middle of the night.

The tenant testified that when they sought the landlord out for some type of a resolution, they did not receive the proper due diligence from the landlord. The tenant testified that the landlord has a responsibility to ensure that their tenant is provided with a safe living space. In this case, the landlord did not do this. The tenant testified that they moved out for this reason and did not pay rent for September 2022.

The landlord is seeking \$500 for liquidated damages because the Tenancy Agreement has a clause that states that if the tenant breaches a material term of the tenancy or ends the tenancy before the fixed term the tenant will pay to the landlord the sum of \$500.00 for liquidated damages.

A copy of the Tenancy Agreement which is signed by both parties is submitted into evidence. The clause in question reads as follows:

If the tenant breaches a material term of the Agreement that causes the landlord to end the tenancy before the end of the fixed term or if the tenant provides the landlord with notice, whether written or oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of \$500.00 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit.

The landlord testified that the liquidated damages are to cover the cost of advertising, showings, screening, and dealing with the additional move in and move out. The tenant moved out before the fixed-term date of May 2023 and therefore, the liquidated damages clause does apply.

In response to the landlord's submissions, the tenant testified that vacating the rental unit was beyond their control given the circumstances. They did not intend to end the tenancy prior to the end of the fixed term but they were unable to stay. The tenant testified that they understand the liquidated damage clause and they understand that they broke it. However, there was no malice in them doing so.

The landlord is seeking \$75.00 in cleaning costs. The landlord testified that they submitted a move-in inspection into evidence which documents that the rental unit was in clean condition when the tenant moved in. The landlord directed my attention to photographs of the rental unit which show the condition of the unit after the tenant moved out. The landlord testified that the photos show dirt and hair and a stain from the tenant's hair dye. The landlord testified that a third party cleaned the rental unit in a couple of hours. The landlord submitted an e-receipt into evidence to support their \$75.00 claim.

The tenant testified that no move-out condition inspection was completed because the landlord would not agree to meet them. The tenant testified they conducted a thorough virtual inspection and submitted videos into evidence which support that the rental unit was left clean. The tenant testified that while they signed the move-in condition inspection, the rental unit was not clean when they moved in, and they spent three

weeks cleaning. The tenant testified that they never used the stove, so any cleaning of the stove that was required was the result of a previous tenancy. The tenant questioned when the landlord took the photographs they submitted into evidence. The tenant testified that there were no flies on the windows when they vacated the rental property. The tenant testified that insects could have entered the windows after they vacated particularly as screens in the window were removed after they left.

### Analysis

Section 26(1) of the Act requires that a tenant must pay rent when it is due, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

There are six lawful reasons for a tenant to withhold rent under the Act.

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenants a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenants to withhold rent (section 65(1)(f) of the *Act*); and,
6. When the landlord consents to the tenants withholding rent.

The tenant's evidence is that they vacated the rental unit and did not pay rent because when they sought a resolution from the landlord to the issues they were having regarding the bat and other animals, they did not receive the proper due diligence from the landlord and were therefore forced to leave.

While I have considered the tenant's submissions, I find that the tenant has not established any of the lawful reasons to withhold rent under the Act. The undisputed evidence before me is that the tenant did not pay rent that was due on September 1, 2023, and abruptly vacated the rental unit on September 3, 2022. In accordance with the Tenancy Agreement, the tenant owed rent on September 1, 2022. On that basis, I

find in favour of the landlord and grant a monetary order in the amount of \$1,495.00 for unpaid rent.

Residential Policy Guideline 4 provides guidance respecting situations where a party seeks to enforce a clause in a tenancy agreement providing for the payment of liquidated damages. Policy Guideline 4 states the following:

The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

The landlord testified that liquidated damages in the amount of \$500.00 are to cover the cost of advertising, showing, screening, and dealing with the additional move in and move out. I find \$500.00 to be a reasonable and genuine pre-estimate of these costs. As a result, I find that the liquidated damages clause is valid.

The uncontested evidence is that the tenant ended the tenancy prior to the end of the fixed term agreement by vacating the rental property. Therefore, in accordance with the liquidated damage clause of the Tenancy Agreement, I find in favour of the landlord and grant the landlord a monetary order in the amount of \$500.00 for liquidated damages.

The landlord is seeking \$75.00 for cleaning. 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 that 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 claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove their entitlement to their monetary claim.

The landlord conceded during the hearing, that they did not complete a move-out inspection. The tenant provided evidence disputing that the photographs provided by the landlord depict the actual condition of the rental unit when the tenant vacated the rental property. I find that the failure of the landlord to conduct a move-out inspection coupled with the testimony and evidence of the tenant casts doubt on the reliability of the landlord's claim. On that basis, I find that the landlord has not provided sufficient evidence to meet the burden which is upon them to prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a

contravention of the Act on the part of the tenant. On that basis, I decline to award the landlord \$75.00 to cover the cost of cleaning the rental unit.

The landlord continues to hold the tenant's security deposit in the amount of \$747.50. In accordance with the off-setting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary orders.

As the landlord was partially successful in their application, they are entitled to recover the filing fee paid for this application.

### Conclusion

I issue a Monetary Order in the Landlord's favour in the amount of \$1,347.50 as follows:

<b>Item</b>	<b>Amount</b>
Rent due September 1, 2022	\$1,495.00
Liquidated Damages	\$500.00
Filing Fee	\$100.00
Security Deposit	-\$747.50
<b>Total Monetary Order</b>	<b>\$1,347.50</b>

The tenant must be served with this Order 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: June 14, 2023

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Residential Tenancy Branch