



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

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

### Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (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;
- return of the filing fee pursuant to s. 72.

H.A. appeared as the Landlord. C.H. and C.R. appeared as the Tenants. A.E. appeared as counsel for the Tenants.

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.

Tenant’s counsel advised that the Tenant’s evidence was sent to the Landlord via registered mail sent on May 31, 2023. The Landlord acknowledges receipt of the Tenant’s evidence at least 7 days prior to the hearing. I find that the Tenants served their response evidence in accordance with s. 88 of the *Act*.

### Preliminary Issue – Service of the Landlord’s Application Materials

At the outset of the hearing, I enquired whether the Landlord had served his application and his evidence on the Tenants. I was told by him that he had sent it by way of registered mail and email.

Tenant’s counsel raised issue with service, noting that the Tenants never gave a forwarding address such that he is uncertain where the Landlord had sent the registered mail. Despite this, he acknowledges that the Tenants received the Notice of Dispute Resolution and an initial evidence package, presumably via email. The Tenants include in their evidence package the documents they say they received from the Landlord.

The Landlord clarified that additional evidence was served by way of registered mail sent on June 8, 2023.

Leaving aside the issue of which address the Landlord had sent the evidence, I accept that the Tenants received the Landlord’s application and the initial evidence, which is included in their evidence package. Pursuant to s. 71(2) of the *Act*, I find the Tenants were sufficiently served with these documents.

With respect to the additional evidence, the Landlord acknowledges that this was sent in contravention with the 14-day deadline for service imposed by Rule 3.14 of the Rules of Procedure. I enquired whether the evidence was new or relevant. The Landlord advised that it was in response to the Tenants’ evidence package.

I find that it would be procedurally unfair to include the Landlord’s late evidence. He filed his application on September 16, 2022. It is unclear to me why he waited until after the deadline to serve evidence that was in his possession. To include the evidence would deprive the respondent Tenants the opportunity to review and respond in compliance with Rule 3.15 of the Rules of Procedure. As such, the additional evidence is excluded.

### Issues to be Decided

- 1) Is the Landlord entitled to compensation for unpaid rent?
- 2) Is the Landlord entitled to compensation for damage to the rental unit?
- 3) Is the Landlord entitled to compensation for other money owed?
- 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 Tenants moved into the rental unit on July 28, 2022.
- Rent of \$2,450.00 was due on the first of each month.
- A security deposit of \$1,225.00 was paid by the Tenants.

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.

#### 1) *Is the Landlord entitled to compensation for unpaid rent?*

The Landlord testified that the tenancy was for a fixed one-year term and that they vacated the rental unit without providing any notice. The Landlord indicates that he received a letter dated August 24, 2022 from the Tenants telling him that they had moved out.

Tenants' counsel highlights an issue with the tenancy agreement received in evidence from the Landlord. As explained by counsel, the file when opened on one program listed the tenancy was for a fixed term and when opened by another program showed that the

tenancy was on a month-to-month basis. Counsel emphasized that the version signed by his clients was the month-to-month tenancy. The Tenants testified that they did not have a fixed-term tenancy and that it was on a month-to-month basis.

The Tenants, through counsel, raise a serious issue with respect to the credibility of the Landlord's evidence. Review of the tenancy agreement provided by the Landlord to the Residential Tenancy Branch shows that this was a month-to-month tenancy. Despite this, the Landlord testified that this was a fixed term tenancy.

On balance, it appears more likely than not that the Landlord has altered the tenancy agreement he served on the Tenants. I am troubled by the Landlord's unsuccessful attempt to alter his documentary evidence, which raises doubts on the reliability and credibility of the Landlord's other evidence. There is also the issue of serving evidence on an address when no forwarding address was provided, which raises further doubts with respect to the Landlord's testimony. Due to these issues, I find that the Landlord's evidence is not reliable or credible.

I accept that this was a month-to-month tenancy.

The Tenants argued that they ended the tenancy due to a material breach of the tenancy agreement by the Landlord. Tenants' counsel raised issue with several maintenance and repair issues that went unaddressed.

Section 45(3) of the *Act* permits tenants to end a tenancy if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period of being given written notice to do so by the tenant.

I enquired with Tenants' counsel if any letter to that effect was sent by the Tenants. It was admitted that the closest the Tenants got to a letter such as that was the one sent on August 24, 2022, which was after they had vacated the rental unit.

I find that the Tenants failed to give notice in accordance with s. 45(3) of the *Act* having only given notice the Landlord's conduct risked an end to the tenancy after they had already left. Accordingly, I find that the Tenants breached the notice requirement set by s. 45(1) of the *Act*, which would require at least one month's notice.

The Landlord testified that there was extensive damage to the rental unit such that he was unable to re-rent the rental unit for some time. I enquired when the Landlord did re-

rent the property. The Landlord gave a meandering response such that circumstances intervened whereby it was not re-rented until January 1, 2023. Despite this, the Landlord says he is limiting his compensation claim for two-months rent.

The Tenants' written submissions, which were adopted as accurate and truthful by the Tenants at the hearing, indicates that the property was put up for short-term rental in late August 2022. The Tenants' evidence includes correspondence with a neighbour at the property indicating on September 1, 2022 that someone was moving into the rental unit and that other vehicles came and went in September 2022. An Airbnb advertisement for the rental unit was also included in the Tenants' evidence, showing availability in September 2022.

On balance, it appears more likely than not that the Landlord did mitigate his damages by listing the rental unit for short-term rental in September 2022. It does not appear that he undertook repairs due to extensive damage as he testified, which I note again reinforces my finding that the Landlord is not credible. Though I am satisfied that the Tenants breached s. 45(1) of the *Act*, I find that the Landlord has failed to quantify his damages. It appears that his claim for lost rental income is somewhat suspect, as he appears to have obtained some rental income for the month of September 2022.

The Landlord's claim for compensation for lost rental income is dismissed without leave to reapply.

The Landlord also seeks compensation for utilities that ought to have been paid by the Tenants. However, he provides no utility invoices proving this portion of his claim. I find that the Landlord has failed to quantify this aspect of his claim and it too is dismissed without leave to reapply.

2) *Is the Landlord entitled to compensation for damage to the rental unit?*

The Landlord's application seeks \$18,700.00 in compensation for damage to the rental unit. I am provided with a monetary order worksheet claiming the following:

Repainting the Whole Interior	\$3,500.00
Deep Cleaning and Vacuum	\$600.00
Complete Landscaping	\$8,500.00
Damage to Deck	\$1,500.00
Carpet Washing	\$2,900.00
Damage to Backyard Door	\$1,700.00

The Landlord provided vague submissions with respect to the damages alleged to have been caused by the Tenants. I pressed the Landlord on several occasions to provide specific details because it appeared that the amounts claimed in the monetary order were estimates. The Landlord acknowledged some of the amounts were estimates, some were incurred, and some were not incurred. The Landlord did not provide any invoices or receipts in his evidence.

Without going into each of the amounts claimed and leaving aside the issue of whether the Tenants caused any damage in breach of s. 37(2) of the *Act*, I find that the Landlord has failed to quantify his claim. No receipts or invoices were provided to prove the losses the Landlord says he incurred. Indeed, I note that the combined amounts claimed by the Landlord reach exactly \$35,000.00. Given this and the round numbers provided in evidence, I conclude that this portion of the Landlord's claim is more likely than not an attempt to reach the small claims limit rather than a bona fide claim for losses actually incurred.

I find that the Landlord has failed to quantify his claim. This portion of his application is dismissed without leave to reapply.

3) *Is the Landlord entitled to compensation for other money owed?*

The Landlord seeks \$1,000.00 in compensation. As explained in the Landlord's application, this claim is a general compensation claim for sickness and loss of income after he and his friends got sick from fleas and insects, which are alleged to have been left at the property by the Tenants' pets. As submitted by the Landlord, this is a general claim for nominal damages.

The Tenants' written submissions indicate that the rental unit was infected with flea-like insects or a fungi/mold that adversely affected their health and the health of their pets. The Tenants' evidence includes photographs of the Tenants with rashes on their skin as well as a letter from the pets' veterinarian.

On balance, I prefer the Tenants' evidence and find that the fleas or mould was present in the rental unit before the tenancy began. Indeed, it seems likely that this contributed to their abrupt departure from the rental unit. I find that if the Landlord did suffer medical issues from fleas or insects at the rental unit, that was not caused by the Tenants or their pets.

This portion of the Landlord's claim is dismissed without leave to reapply.

4) *Is the Landlord entitled to claim against the security deposit?*

The Tenants acknowledge they did not provide their forwarding address. Given this, I find that the issues of extinguishment or the 15-day deadline imposed by s. 38(1) of the *Act* is irrelevant.

Policy Guideline #17 is clear that when a landlord files against the deposit, the balance of the deposit may be granted to the tenant. In this instance, as none of the amounts claimed by the Landlord were granted, I order that the security deposit of \$1,225.00 be returned in full to the Tenants.

5) *Is the Landlord entitled to his filing fee?*

The Landlord was unsuccessful. I find he is not entitled to his filing fee. His claim under s. 72(1) of the *Act* is dismissed without leave to reapply.

Conclusion

I dismiss, without leave to reapply, the Landlord's application in its entirety.

I order that the Landlord return the security deposit of \$1,225.00 to the Tenants.

It is the Tenants obligation to serve the monetary order on the Landlord. If the Landlord does not comply with the monetary order, it may be enforced by the Tenants at the Provincial 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