



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding SKYLINE APARTMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, MNDCL-S, FFL

### Introduction and Preliminary Matters

On November 8, 2022, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

D.B. attended the hearing as an agent for the Landlord, and she advised of the correct name of the Landlord. As such, the Style of Cause on the first page of this Decision has been amended to reflect this correction. Neither Tenant attended the hearing at any point during the 24-minute teleconference. At the outset of the hearing, I informed D.B. that recording of the hearing was prohibited, and she was reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 1:30 PM and monitored the teleconference until 1:54 PM. Only a representative for the Landlord dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that D.B. was the only other person who had called into this teleconference.

D.B. advised that each Tenant was served with a separate Notice of Hearing and evidence package by registered mail on November 24, 2022 (the registered mail tracking numbers are noted on the first page of this Decision). She testified that these were sent to the forwarding address provided by the Tenants, and that one package was accepted, but the other was returned to sender. Based on this solemnly affirmed testimony, I am satisfied that the Tenants were duly served the Landlord’s Notice of Hearing and evidence packages. As such, I have accepted the Landlord’s evidence and

will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for Compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

D.B. advised that tenancy started on April 1, 2019, and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on October 15, 2022. Rent was established at an amount of \$1,319.00 per month and was due on the first day of each month. A security deposit of \$650.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

She testified that a move-in inspection report was conducted with the Tenants on April 1, 2019, and she referenced a signed copy of the report submitted as documentary evidence.

She then submitted that a move-out inspection report was not conducted with the Tenants as they simply left the keys behind and did not participate in a move-out inspection, despite being served with a Final Opportunity to Schedule a Condition Inspection prior to that scheduled move-out inspection for October 15, 2022. She also noted that the Tenants provided a forwarding address by email on October 31, 2022.

She advised that the Landlord was seeking compensation in the amount of **\$631.00** because the Tenants provided a written notice to end their tenancy on September 16, 2022, that was effective for September 29, 2022. However, they were advised that this was not sufficient notice. She testified that the Tenants only paid \$688.00 on October 1, 2022, so the Landlord is seeking the balance of rent owed for October 2022.

She then advised that the Landlord was seeking compensation in the amount of **\$35.00** for the cost of hydro that the Tenants owed from October 15, 2022, to the end of the

month. She testified that the Tenants cut off their hydro and owed the balance; however, there was no documentary evidence submitted to corroborate that the Landlord paid this amount.

D.B. advised that the Landlord was seeking compensation in the amount of **\$250.00** for the cost of repairing damages to the rental unit which consisted of door damage, damage to drawers and cabinets, damage to the bathroom vanity, drywall repairs, and disposal of random refuse. She cited some pictures submitted as documentary evidence; however, there was no invoice provided, or any proof that the Landlord paid this amount or to who it was paid.

Finally, she advised that the Landlord was seeking compensation in the amount of **\$288.00** for the costs to clean the rental unit to return it to a re-rentable state. She testified that she, herself, cleaned and washed the rental unit as everything was sticky. She stated that she spent numerous hours over several days to rectify this issue. She referenced the pictures submitted as documentary evidence to support this position.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlord must offer at least two opportunities for the Tenants to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulation* (the "*Regulation*") outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenants have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit or pet damage deposit is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make

it suitable for occupation. As well, the Tenants must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the inspection reports, as a move-in inspection report was completed by the Landlord with the Tenants, and as the Tenants abandoned the rental unit without attending the final inspection that they were notified of, I am satisfied that the Landlord complied with the requirements of the *Act* in completing these reports. As such, I find that the Landlord has not extinguished the right to claim against the deposit.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit and pet damage deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenants' security deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, as a forwarding address was provided by the Tenants on October 31, 2022, and as the Landlord made this Application within 15 days of receiving it, I am satisfied that the doubling provisions do not apply to the security deposit in this instance.

With respect to the Landlord's claims, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, 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. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenants fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

With respect to the Landlord's claim for compensation in the amount of \$631.00, I am satisfied from the consistent and undisputed evidence that the Tenants only paid \$688.00 for October rent. As such, I grant the Landlord a monetary award in the total amount of **\$631.00** to satisfy this claim.

Regarding the Landlord's claim for compensation in the amount of \$35.00 for the cost of hydro that the Tenants owed, without any documentary evidence to support that this amount was outstanding, and that the Landlord actually paid this, I dismiss this claim in its entirety.

With respect to the Landlord's claim for compensation in the amount of \$250.00 for the cost of repairing damages to the rental unit, while there is no documentary evidence of who the Landlord paid to complete these repairs, I am satisfied from the consistent and undisputed evidence that the Tenants did not leave the rental unit in a reasonable condition at the end of the tenancy. As such, based on the solemnly affirmed testimony of D.B., I grant the Landlord a monetary award in the total amount of **\$250.00** to remedy this matter.

Finally, regarding the Landlord's claim for compensation in the amount of \$288.00 for the costs to clean the rental unit to return it to a re-rentable state, I am satisfied from the consistent and undisputed evidence before me that D.B. cleaned and washed the rental unit to return it to a re-rentable condition. As such, I grant the Landlord a monetary award in the total amount of **\$288.00** to rectify this claim.

As the Landlord was partially successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Tenants to the Landlord**

Balance of October 2022 rent	\$631.00
Repairs	\$250.00
Cleaning	\$288.00
Filing fee	\$100.00
Security deposit	-\$650.00
<b>TOTAL MONETARY AWARD</b>	<b>\$619.00</b>

#### Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$619.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the

Tenants 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: August 18, 2023

---

Residential Tenancy Branch