



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes** MNDL-S, MNDCL-S, FFL  
MNSDB-DR, FFT

### **Introduction**

This hearing dealt with an Application for Dispute Resolution filed by the Landlord (Landlord's Application) under the *Residential Tenancy Act* (the Act) on November 3, 2022, seeking:

- compensation for damage to the rental unit caused by the Tenant, their pet, or their guest;
- compensation for monetary loss or other money owed;
- retention of the security deposit and pet damage deposit; and
- recovery of the filing fee.

This hearing also dealt with a cross-application filed by the Tenant (Tenant's Application) under the Act on November 25, 2022, seeking:

- the return of their security deposit and pet damage deposit or double their amounts; and
- recovery of the filing fee.

The Residential Tenancy Branch Rules of Procedure (Rules of Procedure) state that respondents must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as follows. The Landlord testified that on November 19, 2022, the Notice of Dispute Resolution Proceeding (NODRP), which contains the Application and the Notice of Hearing, as well as most of the documentary evidence before me, was sent to the Tenant by registered mail at their forwarding address. The Landlord provided me with the registered mail tracking number. I therefore deem the package served on November 24, 2023, pursuant to sections 59(3), 88(d), 89(1)(d), and 90(a) of the Act.

The Landlord stated that a second registered mail package containing additional documentary evidence was sent to the Tenant by registered mail at their forwarding address on November 24, 2023, which went unclaimed. I have excluded this evidence as it was sent outside of the Applicant evidence service deadlines.

I verified that the hearing information contained in the NODRP was correct and note that the Landlord was able to attend the hearing on time using this information. As a result, the hearing of the Landlord's Application proceeded as scheduled pursuant to rules 7.1 and 7.3 of the Rules of Procedure, despite the absence of the Tenant or an agent acting on their behalf. Although the teleconference remained open for the 56-minute duration of the hearing, no one attended on behalf of the Tenant.

As the Landlord denied receipt of the Tenant's NODRP and evidence, and the Tenant failed to appear at the hearing of their own Application, I therefore dismiss it without leave to reapply, pursuant to rule 7.3 of the Rules of Procedure.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

### **Issue(s) to be Decided**

Is the Landlord entitled to compensation for damage to the rental unit caused by the Tenant, their pet(s), or their guest(s)?

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Landlord entitled to retention of the security deposit and pet damage deposit? If not, is the Tenant entitled to their return or double their amounts?

Is the Landlord entitled to recovery of the filing fee?

### **Background and Evidence**

The tenancy agreement before me states that the tenancy commenced on April 1, 2021, on a periodic (month-to-month) basis. It states that \$1,150.00 in rent was due on the first day of each month and that a \$1,150.00 security deposit and a \$575.00 pet damage deposit were required. The Landlord stated that these terms are correct, and that both deposits were paid and are currently held in trust. The Landlord stated that the

Tenant abandoned the rental unit sometime in February of 2022 while they were at work. Although the Landlord could not recall the date the Tenant's forwarding address was received, they stated that the envelope was date stamped October 22, 2022.

The Landlord stated that the Tenant had an unauthorized additional occupant in the rental unit for five months, contrary to term two of the addendum. The Landlord therefore sought \$500.00 in compensation, \$100.00 per month over five months, for the additional utility charges incurred due to the unauthorized additional occupant.

The Landlord stated that the Tenant took over a 20x20 patio belonging to them and not rented to the Tenant under their tenancy agreement. The Landlord stated that they repeatedly requested that the Tenant remove their belongings from that area, but they refused. The Landlord therefore sought \$900.00 in compensation for loss of use of this area, charged at \$50.00 per month over 18 months.

The Landlord stated that the rental unit was significantly renovated just prior to the start of the tenancy. They stated that the Tenant or persons permitted into the rental unit by the Tenant smoked in the rental unit, contrary to term 9 of the addendum, and the rental unit had to be cleaned and painted as a result. The Landlord stated that despite this, the new occupants are still complaining about the smell of smoke. The Landlord also stated that the Tenant failed to leave the rental unit undamaged and reasonably clean at the end of the tenancy as required, as they broke the thermostat, and the carpets and window wells were covered in cat feces. The Landlord therefore sought recovery of \$433.13 paid to have the rental unit professionally cleaned, \$1,200.00 paid to have the rental unit painted due to smoke damage, and \$88.56 paid to replace the broken thermostat.

The Landlord stated that the Tenant also failed to return the keys to the rental unit, so the lock had to be replaced at a cost of \$41.43. They also sought recovery of this amount, as well as recovery of the \$100.00 paid for the filing fee. Lastly, the Landlord sought authorization to retain the Tenant's deposits in partial recovery of these amounts, and a monetary order for any remaining balance owed.

No one appeared at the hearing on behalf of the Tenant to dispute this testimony or present any evidence or testimony for my consideration.

## **Analysis**

### **Is the Landlord entitled to compensation for damage to the rental unit caused by the Tenant, their pet(s), or their guest(s)?**

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, regulations or their tenancy agreement, the non-complying party must:

- compensate the other party for any damage or loss that results; and
- do whatever is reasonable to minimize the damage or loss.

Section 37(2) of the Act states that when a tenant vacates a rental unit, they must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and return all keys.

Based on the uncontested and affirmed testimony of the Landlord, I am satisfied that the Tenant breached section 37(2) of the Act by failing to leave the rental unit reasonably clean and failing to return the keys. I am also satisfied that the Tenant breached section 37(2) of the Act and term 9 of the addendum by smoking in the rental unit, which caused damage.

Based on the uncontested and affirmed testimony of the Landlord, I am satisfied that the Landlord incurred \$1,721.69 in losses to clean and paint the rental unit, and replace the thermostat and lock because of the above noted breaches by the Tenant. I therefore grant them recovery of this amount pursuant to section 67 of the Act.

### **Is the Landlord entitled to compensation for monetary loss or other money owed?**

Based on the uncontested and affirmed testimony of the Landlord, I am satisfied that the Tenant breached term 2 of the addendum by allowing an unauthorized occupant to reside in the rental unit and that they took over space belonging to the Landlord not rented to them under their tenancy agreement. I am also satisfied that the Landlord incurred additional utility expenses and a loss of use due to these breaches of the tenancy agreement and addendum. I therefore grant them recovery of the \$1,400.00 sought pursuant to section 67 of the Act.

### **Is the Landlord entitled to retention of the security deposit and pet damage deposit? If not, is the Tenant entitled to their return or double their amounts?**

As there was no evidence or testimony presented that the Landlord extinguished their rights in relation to either deposit, I find that they did not.

However, I am satisfied based on the Landlord's affirmed and uncontested testimony that the Tenant abandoned the rental unit prior to the effective date of the notice to end tenancy served on them, without any warning while the Landlord was at work. I therefore find that the Landlord was entitled to complete a move-out condition inspection in the Tenant's absence pursuant to section 35(5)(b) of the Act, and that the Tenant extinguished their right to the return of both deposits by abandoning the rental unit and failing to attend or participate in a move-out condition inspection.

As the Tenant extinguished their right to the return of the deposits, the Landlord was therefore not obligated to return any amounts lawfully collected, or to claim against them, pursuant to section 38(2) of the Act. However, the Landlord still holds the deposits and interest in trust and pursuant to Residential Tenancy Policy Guideline (Policy Guideline) #17, I find that these amounts must still be set off against the amounts awarded to the Landlord.

As rent under the Tenancy agreement was \$1,150.00, and the Landlord charged and collected \$1,725.00 in security and pet damage deposits, I find that the Landlord overcharged the Tenant by \$575.00. As they were not entitled to charge this additional amount, I therefore order that the Tenant is entitled to its return, plus \$11.55 in interest owed. The Landlord is entitled to retain the remaining balance and interest of \$1,173.10 towards the amounts awarded to them above.

I have offset the amount owed to the Landlord by the Tenant (\$3,121.69) by the amount owed to the Tenant by the Landlord (\$586.55). The remaining balance owed to the Landlord is \$2,535.14. After deducting the \$1,173.10 in deposits and interest lawfully collected and retained in trust by the Landlord from this amount, I find that the Landlord is still owed \$1,362.01. Pursuant to section 67 of the Act, I therefore grant the Landlord recovery of this amount and order the Tenant to pay this amount to the Landlord.

**Is the Landlord entitled to recovery of the filing fee?**

As the Landlord was successful in their Application, I grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. I therefore order the Tenant to pay this amount to the Landlord.

## **Conclusion**

The Tenant's Application is dismissed in its entirety without leave to reapply.

Pursuant to section 67 of the Act, I grant the Landlord a **\$1,462.04** monetary order. The Landlord is provided with this order in the above terms and the Tenant must be served with this order as soon as possible. Should the Tenant fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court

I believe that this decision has been rendered within 30 days after the close of the proceedings, in accordance with section 77(1)(d) of the Act and the *Interpretation Act* with regards to the calculation of time. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if it is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision, nor my authority to render it, are affected if I have erred in my calculation of time and this decision and the associated Order were issued more than 30 days after the close of the proceedings.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 7, 2024

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Residential Tenancy Branch