



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

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

### Introduction

This hearing dealt with cross-applications filed by the parties. On July 13, 2023, the Tenants made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On August 14, 2023, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of 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*.

These Applications were originally set down for a hearing on January 8, 2024, at 1:30 PM with a different Arbitrator, but for unforeseen circumstances, had to be rescheduled to be heard de novo. This Application was then set down for a hearing on March 4, 2024, at 1:30 PM.

Both Tenants and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

There were no issues concerning service of documents. As such, all parties' evidence will be accepted and considered 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

- Are the Tenants entitled to a Monetary Order for compensation?
- Are the Tenants entitled to recover the filing fee?
- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to apply the security deposit towards this debt?
- Are the Landlords 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.

All parties agreed that tenancy started on July 1, 2023, but neither party was sure when the tenancy ended. Tenant X.L. advised that the tenancy ended when they left the keys behind on July 11, 2023, after telling the Landlord via text message they were leaving. Rent was established at an amount of \$1,800.00 per month and was due on the first day of each month. A security deposit of \$1,000.00 was also paid, and the Landlord was cautioned that she was not permitted to accept a security deposit that exceeded more than a half a month's rent, pursuant to Section 19 of the *Act*. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

X.L. advised that they were seeking compensation in the amount of **\$2,050.00**, which was broken down as \$1,800.00 for the first month's rent because of a loss of quiet enjoyment, not having a washer or dryer, for false advertising, for not completing a move-in inspection, and for not providing an addendum to the tenancy agreement. As well, the additional \$250.00 was the cost of moving fees. He testified that there was a person working in the rental unit from July 4 to 9, 2023, and he referenced the pictures

submitted as documentary evidence to support this. He testified that the rental unit was not clean at the start of the tenancy, and he cited the pictures and videos of the dirty kitchen and oven, the mould in the bathroom, the clogged sink, the dirty couch left in the rental unit, and the construction debris and broken furniture left outside. He stated that there was leftover food in the fridge, that something was growing in there, and that it was cleaned on July 12, 2023, by the Landlord. He also stated that the mattress provided was dirty and the bedframe was broken.

The Landlord advised that her realtor informed her that the Tenants did not move in on July 1, 2023, and that her worker waited three days for the Tenants to arrive. She testified that her realtor helped clean the rental unit on July 9, 2023, and that some furniture was left behind, despite not indicating on the tenancy agreement that furniture was to be provided as part of the tenancy. She denied that there was any construction in the rental unit during the tenancy, and she acknowledged that the washer and dryer were moved to a different space on the property. She indicated that there was some discussion about the different areas of the property that could be rented to the Tenants. She was seeking compensation in the amount of **\$1,800.00** because the Tenants moved out and did not pay for August 2023 rent.

### 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 neither a move-in inspection report nor a move-out inspection was conducted with the Tenants, I am satisfied that the Landlord failed to comply with the requirements of the *Act* in completing these reports. As such, I find that the Landlord has extinguished the right to claim against the deposit. However, as this claim only applies to damage, and as the Landlord claimed for rent, which is not damage, I am satisfied that the Landlord can still 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, given that a forwarding address in writing was never provided to the Landlord, I am satisfied that this Section of the *Act* was never initiated, and the doubling provisions do not apply to the security deposit in this instance.

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

I also find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties’ testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Tenants’ claims for compensation in the amount of \$2,050.00, there is no dispute that the parties entered into a fixed term tenancy agreement from July 1, 2023, and ending on August 31, 2023. Yet, the tenancy effectively ended when the Tenants gave up vacant possession of the rental unit on or around July 11, 2023. Sections 44 and 45 of the *Act* set out how tenancies end, and Section 45 indicates that the Tenants may end the tenancy early if the Tenants have informed the Landlord of a breach of a material term of the tenancy in writing, and the Landlord has not corrected that breach within a reasonable period of time. As the Tenants issued no such letter, I am satisfied that they did not end the tenancy in accordance with the *Act*.

However, I am also satisfied that the Landlord was an absentee Landlord, that she knew little of the state of the rental unit, and that she managed this property in a disorganized and careless manner. This is evident in that the tenancy agreement indicated what was specifically rented to the Tenants, but there were ongoing

discussions about renting other parts of the property to the Tenants, which clearly made this situation all the more confusing. Moreover, I am satisfied the rental unit was not provided to the Tenants in a re-rentable state either and there was no move-in inspection report completed by the Landlord to document the state of the rental unit. I am also satisfied that the Landlord left furniture and debris behind in the rental unit and on the property for the Tenants to deal with. As such, I am satisfied that the Landlord has also breached the *Act* here.

Given that I am satisfied that the Tenants did not end the tenancy in accordance with the *Act*, and given that I am satisfied that the Landlord breached the *Act* as well, I find that both parties are negligent for the manner with which this tenancy unfolded. The Tenants' claims for the first month rent and moving expenses is dismissed without leave to reapply, and the Landlord's claim for the full month of August 2023 rent is granted only in part. As such, the Landlord is granted a monetary award in the amount of **\$900.00** for half of August 2023 rent.

As the Tenants were not successful in their Application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for their Application.

As the Landlord was not successful in her Application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for her Application.

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

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

Half of August 2023 rent	\$900.00
Security deposit	-\$1,000.00
<b>TOTAL MONETARY AWARD</b>	<b>\$100.00</b>

#### Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$100.00** 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: March 18, 2024

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Residential Tenancy Branch