



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      MNRL - S; MNDL - S; MNDCL - S, FFL, MNDCT, FFT

### **Introduction**

This hearing was scheduled to deal with monetary cross applications.

The Landlords applied for monetary compensation for unpaid and/or loss of rent, for damage to the rental unit and cleaning; and, authorization to retain the Tenants' security deposit and pet damage deposit.

The Tenants applied for monetary compensation for damages or loss under the Act, regulations or tenancy agreement and return of their security deposit and pet damage deposit. The Tenants' claims for damages or losses were dismissed with leave to reapply during the original hearing session of February 20, 2024 for reasons set out in the Interim Decision issued on February 21, 2024. The Tenants' security deposit and pet damage deposit have been disposed of by way of this decision under the Landlords' application to retain the deposits.

All parties appeared at the commencement of the original hearing. Landlord C.D. and Tenant K.J. appeared at the reconvened hearing. The parties were affirmed.

Service issues and other preliminary and procedural matters were addressed in the Interim Decision of February 21, 2024. The Interim Decision should be read in conjunction with this decision.

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

Have the Landlords established an entitlement to compensation for unpaid rent, damage to the rental unit and cleaning in the amounts claimed?

Are the Landlords authorized to retain the Tenant's security deposit and pet damage deposit?

Are the Landlords entitled to recover the filing fee paid for their application from the Tenant?

### Background and Evidence

The tenancy started on February 15, 2023 on a month to month basis. The Landlords collected a security deposit of \$875.00 and a pet damage deposit of \$875.00. The monthly rent was set at \$1,750.00 due on the first day of every month.

The Landlord and Tenant participated in a move-in inspection together and a move-in inspection report was prepared.

The Landlord found the rental unit was abandoned or vacated by the Tenants on or about September 23, 2023. The Landlords confirmed with the Tenants that they had vacated the unit via emails exchanged on September 25 and 26, 2023. The Landlords only had a phone number and email address for the Tenants.

A move-out inspection was not performed together. The Landlord took photographs of the rental unit after they found the unit had been vacated.

The Landlords started cleaning and making repairs to the rental unit. The unit was advertised for rent starting on September 27, 2023. The Landlords were successful in re-renting the unit for \$1,775.00 per month starting on October 15, 2023.

Below, I have summarized the Landlord's claims against the Tenant and the Tenant's responses.

### ***Unpaid and/or loss of rent***

The Landlords seek to recover unpaid rent of \$1,750.00 for the month of October 2023 on the basis the Tenants did not give notice to end the tenancy and the Landlords suffered a loss as a result. The Landlords re-rented the rental unit for \$1,775.00 starting October 15, 2023.

The Tenant was of the position the Landlords caused the tenancy to end in the following ways:

- There was no running water for 16 days in August
- the Landlords threatened and harassed the Tenants.

The Tenant stated she did not give notice to end the tenancy as she felt too scared to do so.

The Landlord denied the allegations made by the Tenant with respect to harassment and threats. The Landlord acknowledged the water line to the rental unit broke in August 2023 but explained there was a pump providing some water to the rental unit from their house every day except for two days, and there was a nearby stream to gather water. The Landlords had to replace the entire water line to restore service.

Both parties were in agreement that water was full restored on August 24, 2023.

### ***Damage to rental unit***

The Landlords seek \$500.00 for water damage to the hardwood floors. The Landlords suspect the water damage is from the Tenants allowing their wet dogs to lie on the floor. The Landlord described the flooring to be in “very poor” condition at the end of the tenancy. The Landlords sanded down and refinished the floors themselves.

The Tenant submitted that the floors were in poor condition at the start of the tenancy and that they did not permit their wet dogs inside the rental unit before being dried off.

### ***Cleaning***

The Landlords seek \$400.00 for having to clean the rental unit. The Landlords submitted that everything needed to be cleaned and that the Tenants left the property in a terrible mess. The Landlords did the cleaning themselves over 2 days at 8 hours a day.

The Tenant was of the position she left the rental unit clean.

### **Analysis**

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are

provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this case, the Landlords bear the burden to prove their claims for unpaid rent, damage and cleaning. The burden of proof is based on the balance of probabilities.

### ***Unpaid rent***

Under section 26 of the Act a Tenant is required to pay rent in accordance with their tenancy agreement even if the Landlord has violated the tenancy agreement, the Act or Regulations, unless the Tenant has a legal right under the Act to withhold rent. The Act provides very specific and limited circumstances when a tenancy may legally withhold rent. Those circumstances are: overpayment of rent in a previous month or payment of an unlawful rent increase, overpayment of a security deposit or pet damage deposit, the Tenant has paid for emergency repairs to the property under section 33 of the Act, or the Tenant has an Landlord's or an Arbitrator's authorization to withhold rent. The Tenant did not present evidence in support of one of these reasons for not paying rent for October 2023.

Under section 45(1) of the Act a Tenant in a month to month tenancy must give the Landlord at least one full month of advance written notice to end the tenancy. It is undisputed that the Tenants vacated or abandoned the rental unit in late September 2023 and that they did not give the Landlords advance notice as required under section 45(1) of the Act.

To end the tenancy in September 2023 and avoid the obligation to pay rent for October 2023, section 45(1) required that the Tenants had to deliver a written notice to end tenancy to the Landlords no later than August 31, 2023. Clearly, the Tenants violated this section of the Act.

The Tenant was of the position she did not give notice due to the loss of water and allegations of threats and harassment by the Landlords. I heard a considerable amount of testimony and I was provided copies of numerous emails exchanged between the parties with respect to loss of water and alleged harassment and threats toward the Tenants and I provide my findings below.

With respect to the loss of water, the Tenants may be entitled to some compensation from the Landlords for loss of a service or facility that was to be provided to them under the tenancy agreement but the Tenant has to file her own claim for that as I have dismissed her claim with leave to reapply. The water supply was off or diminished for a period of time; however, it fully restored on August 24, 2024. A breach of the Act or the tenancy agreement does not automatically entitle a Tenant to violate their obligations under the Act, including the obligations under section 45(1). I find the Tenant's decision to end the tenancy in September 2023, without giving notice by August 31, 2023, is not supported by the temporary loss of water and diminished water pressure prior to August 24, 2023.

The Tenant had testified that she had decided in August 2023 that she would be ending the tenancy in September 2023 but that she decided not to give the Landlords written notice by August 31, 2023 due to fear of the Landlords.

I was provided opposing oral testimony as to allegations of harassment and threats made by the Landlords. In reading the email communications between the parties, I find the Tenant's claim that she was very fearful for her safety to be inconsistent with the communications that I see.

On September 25, 2023 when the Landlord asserts the Tenants have abandoned the rental unit, the Tenant takes issue with the use of the word abandon and points to the Landlords "voiding" the contract when the water supply was lost in August 2023. The Tenant makes no mention of harassment or threats.

The following day, on September 26, 2023, the Tenant sends another email to the Landlord stating the tenancy was ended due to the Landlord's failure to provide water in August 2023 and there is no mention of leaving due to harassment or threats.

The Tenant claimed that the Landlord was screaming at her over lack of lawn watering. Although the Landlord denied screaming, I find it likely tensions were high. In any event, this did not apparently dissuade the Tenant from asserting her rights, such as requiring an advance notice for the Landlords to enter the property. Such demands do not

appear consistent with a Tenant who is allegedly too fearful to give a proper written notice to end tenancy.

Considering the Landlords determined the rental unit had been vacated or abandoned on September 25 or 26, 2023 and they re-rented the unit for October 15, 2023, I am satisfied they took reasonable steps to mitigate their loss of rent.

I calculate the Landlord's loss of rent to be: \$862.50 which is the monthly rent the Tenants were obligated to pay \$1,750.00 less \$887.50 that they received from the incoming Tenant for the second half of October 2023 [ $\$1,775.00 \times \frac{1}{2} = \$887.50$ ].

As I stated to the parties during the hearing, the Tenant remains at liberty to make her own claim for compensation against the Landlord for loss of water and loss of quiet enjoyment if she so chooses.

### ***Damage to rental unit***

I have reviewed the photographs the Landlord took on September 28, 2023. They depict an older wood floor and what appears to be water stains or mottling of the floor finish. The Landlord described the wood floors as being in "very poor" condition at the end of the tenancy. Considering the parties demonstrated an palpable hostility toward each other during the hearing, I accept the floors are in poor condition at the end of the tenancy. However, the move-in inspection report describes the floors as being in "fair" condition at the start of the tenancy. The Landlord seeks \$500.00 to sand and re-finish the wood flooring; however, given the fair rating several months prior, I find it likely that the floors were likely due for refinishing in the near future in any event. Therefore, I limit the Tenant's liability and the Landlord's award to 25% of the amount claimed, or \$125.00.

### ***Cleaning***

Section 37 of the Act requires a Tenant to leave a rental unit "reasonably clean" and vacant at the end of the tenancy. That includes removing garbage and unwanted items.

The Landlord provided numerous dated photographs depicting the level of cleanliness at the end of the tenancy. It is clear to me the rental unit was not left anywhere near "reasonably clean" at the end of the tenancy. Rather, it would appear the Tenant packed up and moved out and there was no attempt at cleaning. I find the Landlord's request

for compensation of \$400.00 to clean the entire rental unit to be very reasonable and I grant that request.

### ***Filing fee***

As the Landlords' claim had merit, I further award the Landlords recovery of the \$100.00 filing fee from the Tenant.

### ***Security deposits and pet damage deposits***

I authorize the Landlords to deduct the amounts awarded to the Landlords from the Tenant's security deposit and pet damage deposit and I order the Landlords to return the balance of the Tenant's deposits to her, with interest. I calculate the accrued interest on each deposit to be \$26.16.

### **Conclusion**

The Landlords are awarded compensation totaling \$1,487.50 from the Tenant. The Landlords are authorized to deduct this sum from the Tenant's deposits and I order return the remaining balance to the Tenant, as calculated below:

Security deposit and interest	\$901.16
Pet damage deposit and interest	\$901.16
Less: awards to the Landlords for	
Unpaid rent	-\$862.50
Damage	-\$125.00
Cleaning	-\$400.00
Filing fee	-\$100.00
Monetary Order for Tenant	\$314.82

In keeping with Residential Tenancy Policy Guideline 17, the Tenant is provided a Monetary Order in the amount of \$314.82 to ensure payment is made by the Landlords. The Monetary Order must be served upon the Landlords and if the Landlords do not comply with the order the Tenant may file it in Provincial Court (Small Claims) to enforce as an order of the 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 20, 2024

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Residential Tenancy Branch