



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FF MNDC MNDL MNSD

### Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act"):

The landlords sought:

- a monetary order for loss, damage and money owed under the tenancy agreement pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenants sought:

- a return of their security deposit pursuant to section 38 of the *Act*;
- a return of the filing fee pursuant to section 72 of the *Act*.

Only landlord J.M. (the "landlord") attended the hearing. The landlord was given a full opportunity to be heard, to present testimony and to make submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution and explained that he sent his application for dispute and evidentiary package to the tenants by way of Canada Post Registered Mail.

### Issue(s) to be Decided

Are the landlords entitled to a monetary award?

Can the tenants recover their security deposit?

Is either party entitled to a return of the filing fee?

### Background and Evidence

Undisputed testimony provided to the hearing by the landlord explained that this tenancy began on September 1, 2016 and ended on July 30, 2017. This was set to be a three year fixed-term tenancy ending on August 31, 2019. Rent was \$1,900.00 per month and a security deposit of \$950.00 paid at the outset of the tenancy continues to be held by the landlords.

The landlord explained that he was seeking a monetary award of \$4,363.63. The landlord said that this application represented the following:

ITEM	AMOUNT
Cleaning and repairs	\$630.00
Time spent re-renting	1,003.75
Liquidated Damages	1,900.00
Unpaid Hydro/Fortis	646.45
Costs associated with installation of gas line	183.43
<b>TOTAL =</b>	<b>\$4,363.63</b>

The landlord said that the tenants left the apartment clean but he described it as superficially clean. The landlord stated that following the conclusion of the tenancy, he was forced to spend a fair amount of time preparing the rental unit for new tenants who were set to occupy the unit on August 1, 2017. The landlords seek compensation for both the time and effort related to the cleaning and minor repairs that were required in the rental unit following the tenants' departure, along with the time he spent re-renting the suite.

In addition to the above described compensation, the landlord said that the tenants failed to pay hydro and gas bills for an area of the property that they used as part of a music studio. The landlord acknowledged that this portion of the home was not included in the tenancy agreement and that the tenants were permitted to use this space out of the landlords' good will. The landlord said that it was his understanding that the tenants would use this portion of the property respectfully; however, the landlords discovered

that large hydro and gas bills accrued over time and he said the tenants failed to pay these despite the landlords numerous requests to do so.

The landlords also seek compensation for a gas line that was installed at the instance of the tenants. The landlord said that the tenants informed him at the start of the tenancy that they would be in occupation of the home for “a long time”. In an effort to accommodate their needs, the landlord agreed to put in this new facility at his own expense.

The final portion of the landlords’ application for a monetary award related to the liquidated damages clause that the tenants agreed to pay should the tenancy agreement be broken and for an award related to time and effort he spent preparing all related hearing documents and the rental unit itself. This clause calls for a payment equivalent to one month’s rent “if the tenant breaches a material term of this agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral or by conduct of an intention to breach this agreement and end the tenancy by vacating and does vacate.”

The tenants did not appear and no submissions were provided to the hearing them or their agent. The landlord said that he had not spoken to the tenants since March 29, 2018 and that no forwarding address was provided to them in writing.

### Analysis

I will begin by analyzing the landlords’ application for dispute resolution and will then turn my attention to the tenants’ application before me.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove their entitlement to a monetary award.

The landlords are seeking an award of \$4,363.63 as described above. After having reviewed the documentary evidence submitted as part of the landlords’ hearing

package, and after having considered his undisputed oral testimony, I find that the landlords have provided sufficient evidence demonstrating that they are entitled to a portion of their application for a monetary award.

A review of the condition inspection report completed by the landlords following the conclusion of the tenancy reveals numerous items which were identified as requiring cleaning and repair. I accept the landlord's undisputed testimony that further cleaning was required in the rental unit following the tenants' departure and allow the landlord to recover \$630.00, the amount sought for cleaning and minor repairs.

The second portion of the landlords' application concerns an award related to the time and effort the landlords spent to re-rent the suite. The landlords have also applied for liquidated damages related to the broken tenancy agreement.

*Residential Tenancy Policy Guideline #4* examines the issue of liquidated damages and notes, "A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement...If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent." This *Guideline* notes that a liquidated damages clause will be found to be valid if; the sum demanded is not extravagant in comparison to the greatest loss that could follow a breach, if an agreement is to pay money and a failure to pay requires that a greater amount be paid, or if a single lump sum is to be paid on occurrence of several events, some trivial some serious.

After examining the landlords' application and the events which led to a violation of section 7 (broken fixed term) of the *Act*, I find that the landlords are entitled to a monetary award of \$1,900.00. This amount is *not extravagant in comparison to the greatest loss that could follow a breach*, it is not an amount over and above the monthly rent, and it is not contingent on a series of several events. The tenant violated the *Act* and therefore must pay the damages which have stemmed from such a breach. I decline to award the landlords the funds sought for the time and effort to re-rent the suite. Doing so would amount to an award of double compensation, as one of the chief aims of a liquidated damages clause is to provide a landlord compensation for the time and effort required to re-rent a suite, following a violation of the tenancy agreement by the tenant.

The final portion of the landlords' application relates to unpaid hydro and gas bills, along with the return of fees related to the installation of a gas line. The landlord

acknowledged during the hearing that these matters were not included in the tenancy agreement entered into between the parties and that the landlords allowed the tenants to occupy another space on the property which they could operate as a music studio. I find that this agreement between the landlords and tenants falls beyond the scope of the tenancy agreement entered into between the parties and I therefore cannot consider in this portion of the application. The landlords may wish to pursue this portion of their application in small claims court; however, the scope of my powers are limited by section 67 which states that *the claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party*. A review of the tenancy agreement, along with the landlord's oral testimony revealed that these items for which the landlords seek compensation did not form a part of the tenancy agreement entered into between the parties. I therefore dismiss this portion of the landlords' application.

No submissions were provided to the hearing by the tenants and no evidence was provided to the hearing that the tenants provided the landlords with their forwarding address in writing. I therefore dismiss the tenants' application without leave to reapply.

As the landlords were partially successful in their application, they may recover the \$100.00 filing fee from the tenants pursuant to section 72 of the *Act*.

Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlords to retain the tenants' security deposit in partial satisfaction for a return of their monetary award.

### Conclusion

I issue a Monetary Order of \$1,680.00 in favour of the landlords as follows:

Item	Amount
Cleaning and minor repairs	\$630.00
Breach of Liquidated Damages Clause	1,900.00
Return of Filing Fee	100.00
Less Security Deposit	(-\$950.00)
<b>Total =</b>	<b>\$1,680.00</b>

The landlords are provided with a Monetary Order 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: July 4, 2018

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Residential Tenancy Branch