



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL MNDCL MNRL-S

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damages or losses arising out this tenancy pursuant to section 67 of the *Act*;
- an Order to retain the security or pet deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both tenants, and the landlord's agent, M.R. (the "landlord") attended the hearing. The tenants were represented by tenant V.B. All parties present were given a full opportunity to be heard, to present their testimony and to make submissions.

Following opening remarks, the landlord asked to amend his application for a monetary award to reflect a lower amount of \$3,410.40. As the tenants would not be prejudiced by this change, pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to reflect this new, lower amount.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord retain the tenant's security deposit?

Is the landlord entitled to a return of the filing fee?

### Background and Evidence

Testimony provided by both parties explained this tenancy began on July 1, 2017 and ended on June 30, 2018. Rent was \$2,650.00 per month and two deposits of \$1,325.00 each paid at the outset of the tenancy for pet and security issues continue to be held by the landlord.

The landlord seeks a monetary award of \$3,410.40 for alleged loss under the tenancy. The landlord's application is detailed as follows:

- Unpaid rent for July 2018 - \$2,650.00
- Move out cleaning - \$600.00
- Replacement of Lightbulbs - \$60.04
- Filing Fee - \$100.00

Total = \$3,410.40

The landlord said the tenants had failed to provide him with timely notice of their intention to vacate the rental unit. The landlord explained, the parties had signed a fixed-term tenancy agreement which was set to expire on June 30, 2018. On June 18, 2018, the tenants emailed the landlord informing him they would be vacating the premises on June 30, 2018. The landlord argued the tenants had a duty to provide him with one month's notice and had failed to do so. The landlord said the parties had not agreed to a move-out clause in the tenancy agreement and the landlord reasoned, the tenants therefore had a duty to provide him with adequate notice. The landlord detailed the steps he took to re-rent the suite following notice being provided by the tenants that they intended to vacate the suite on June 30, 2018. These included advertising the home on Craigslist, Kijiji and showing the unit in person.

In addition to unpaid rent for July 2018, the landlord sought cleaning fees of \$600.00. Section 8 of the tenancy agreement signed by the parties reads as follows:

On the last date of tenancy you must be fully moved by 12:01pm.

You are required to hire a cleaning company or cleaning service to perform a detailed move out clean service. (Carpets {if any} [sic] must be professionally streamed [sic] cleaned and provide the landlord with a copy of the service receipt.

***Cleaning issues will NOT be considered to be normal wear, under any circumstances whatsoever.*** (emphasis and bold included)

If the home is not satisfactorily cleaned, has trash or abandoned items; appropriate charges will be deducted from your Deposit. If it is necessary to hire someone to clean the home, labour will cost must more than if you had taken the time to properly clean the unit in the first place

Rates will be deducted from your damage deposit if the property should you fail [sic] to have the place cleaned or its [sic] done incorrectly....

2-3 bedroom Townhome is \$600.00

The landlord argued the tenants had failed to follow the terms of the tenancy agreement and did not ensure the property was subject to a professional, detailed clean at move-out. The landlord explained that while the unit was "clean" it was not "professionally cleaned" and had "wall spots

and cobwebs” and described the kitchen cabinets as “greasy with spots and dirt.” The landlord acknowledged the carpets were professionally cleaned but argued this had not been done properly, as the cleaning was done while the tenants and their furniture continued to occupy the rental unit. The landlord alleged the continued presence of the tenants and their belongings after the carpet cleaning had resulted in a dirty rental unit and missed areas of cleaning. The final portion of the landlord’s application concerned lightbulbs which he noted burnt out and required replacement at the conclusion of the tenancy.

The tenants disputed the entirety of the landlord’s application. The tenants said they left the premises in accordance with the terms of the tenancy agreement and had no intention of ever remaining in the property following the expiration of the fixed-term tenancy on June 30, 2018. In addition, the tenants argued the rental unit had been left very clean and had been subject to professional carpet cleaning. The tenants acknowledged that no professional cleaning service had been present in the unit to “detail” clean the unit; however, they said the home was left “very clean.”

As part of their evidentiary package, the tenants provided a significant number of photos to show the state of cleanliness in which they had left the rental unit. The tenants disputed the landlord’s assertion that the unit’s carpets were cleaned with their furniture still present in the home. They testified no furniture was present in the unit when the carpets were cleaned and explained it had all been moved to the side.

### Analysis

The landlord has applied for a monetary award of \$3,410.40. Submissions were provided by the landlord that this amount sought related to unpaid rent for July 2018, along with cleaning fees as required by the tenancy agreement, replacement of lightbulbs and a return of the filing fee.

I will begin by analysing the portion of the landlord’s application as it related to cleaning of the unit and then turn my attention to the other portions of the application.

After having closely reviewed the tenancy agreement signed by the parties, in particular section 8, I find the landlord has limited recourse under the *Act* to recover these funds. Section 37(2) of the *Act* states, “when a tenant vacates a rental unit, the tenant must (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.”

The tenancy agreement notes, “**Cleaning issues will NOT be considered to be normal wear, under any circumstances whatsoever**”. Furthermore, the landlord argued the tenants had agreed to the terms of the tenancy agreement and were therefore bound.

Section 5(1) of the *Act* clearly states, “Landlords and tenants may not avoid or contract out of this Act or the regulations.” While subsection (2) notes, “Any attempt to avoid or contract Act or the regulations is of no effect.” I find section 8 of the tenancy agreement signed by the parties to

be an attempt by the landlord to contact out of the *Act*. As section 37 of the *Act* dictates, a rental property must only be left “reasonably clean and undamaged except for reasonable wear and tear.” A review of the photos submitted as part of the tenants’ evidentiary package shows the rental unit to have been left in a state as contemplated by section 37 of the *Act*. For these reasons, the landlord’s application for \$600.00 in cleaning fees is dismissed.

The landlord has applied for a return of July 2018 rent. The landlord said the tenants failed to provide him with adequate notice of their intention to vacate the premises and he was therefore unable to rent the premises until August 1, 2018. The tenants moved-out on June 30, 2018 the conclusion of their fixed-term tenancy and argued they had no obligation to provide the landlord with notice.

*Residential Tenancy Policy Guideline #30* related to the Fixed-Term tenancies states at Section C, “A tenant who wants to end the tenancy at the end of the fixed term, must give one month’s written notice. For example, if the fixed term expires on June 30<sup>h</sup>, the tenant must ensure the landlord receives the tenant’s notice to end the tenancy by May 31<sup>st</sup>.” I find that the tenants’ therefore had an obligation to provide the landlord with written notice of their intention to end the tenancy at the end of the fixed term.

Section 7 of the *Act* explains, “If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other’s non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.”

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, “Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.”

I find the tenants notice to the landlord on June 26, 2018 informing him of their intention to vacate the suite by June 30, 2018 provided the landlord with little opportunity to re-rent the suite for July 1, 2018. The landlord testified that the rental unit was immediately advertised on Craigslist and Kajiji, and was shown in person by the landlord’s agent. I am satisfied the landlord made reasonable efforts to re-rent the suite in light of the late notice provided by the tenants and award the landlord unpaid rent for July 2018.

The final portion of the landlord’s application relates to a claim for \$60.04 for the replacement of lightbulbs in the rental unit.

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 landlord to prove their entitlement to a claim for a monetary award.

A review of the landlord's application for dispute resolution does not contain any receipts or invoices for the expenses related to the lightbulbs.

Section D of the *Residential Tenancy Policy Guideline #16* related to compensation for damage or loss states as follows:

*The amount arrived at must be for compensation only, and must not include any punitive element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.*

I find the landlord has failed to produce evidence that can verify the actual monetary amount of the loss or damage related to the replacement of lightbulbs and I therefore dismiss this portion of the landlord's application.

As the landlord was partially successful in his application, he may recover the \$100.00 filing fee from the tenants.

Using the offsetting provisions contained in section 72 of the *Act*, the landlord may retain the tenants' security and pet deposits in partial satisfaction for a return of the monetary award.

### Conclusion

I issue a Monetary Order in the landlord's favour in the amount of \$100.00 against the tenants.

<b>Item</b>	<b><u>Amount</u></b>
Unpaid rent for July 2018	\$2,650.00
Return of Filing Fee	100.00
Less Security Deposit	(-1,325.00)
Less Pet Deposit	(-1,325.00)
<b>Total =</b>	<b>\$100.00</b>

The landlord is 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: November 27, 2018

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Residential Tenancy Branch