



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL-S, MNDL-S, OL, FFL, MNSD, FFT

### Introduction

This hearing dealt with cross applications filed by the parties. On October 11, 2018, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking to apply the security deposit and pet damage deposit towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On October 18, 2018, the Tenant made an Application for Dispute Resolution seeking double the security deposit and pet damage deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

These Applications were set down for a hearing on February 5, 2019 and were subsequently adjourned to be heard on March 26, 2019 as there was not enough time to complete the hearing initially.

These Applications were adjourned again for a hearing on May 21, 2019 as there was not enough time to complete the hearing initially.

Both the Landlord and Tenant attended the second adjourned hearing. All parties provided a solemn affirmation.

As per the original hearing and the Interim Decision dated February 6, 2019, the Tenant did not serve the Notice of Hearing package in accordance with Section 89 of the *Act*. As such, I have dismissed the Tenant’s Application. However, the issues surrounding the security deposit and pet damage deposit will still be addressed as part of the Landlord’s Application.

With respect to the evidence served by both parties, I have accepted the submissions by both parties and will consider them when rendering this decision.

All parties acknowledged the evidence submitted and 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

- Is the Landlord entitled to a Monetary Order for rent arrears?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit and pet damage deposit towards these debts?
- Is the Landlord 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.

Both parties agreed that the tenancy started on March 1, 2018 and that the tenancy ended when the Tenant vacated the rental unit on October 1, 2018. Rent was established at \$2,000.00 per month, due on the first day of each month. A security deposit of \$1,000.00 and a pet damage deposit of \$400.00 were also paid. A copy of the tenancy agreement was submitted into evidence.

The Landlord advised that she “tried on several occasions” to conduct a move-in inspection report at the beginning of the tenancy and a move-out inspection report at the end of tenancy. However, she acknowledged that she never completed either with the Tenant. She stated that she never provided the Tenant with a final opportunity to conduct a move-in or move-out inspection. A copy of the Landlord’s move-in and move-out inspection reports were submitted into evidence.

Both parties agreed that a forwarding address in writing was provided in a letter on October 1, 2018.

The Landlord submitted that she was seeking rent arrears in the pro-rated amount of \$533.00 for October 2018 rental loss as the Tenant gave written notice to end her tenancy on September 18, 2018 to vacate the rental unit by October 1, 2018. However, the Landlord could not show the rental unit because she did not know if the Tenant would move by October 1, 2018. She stated that new tenants moved into the rental unit on October 8, 2018, so she is actually seeking compensation in the amount of **\$451.61** to cover the rental loss that she suffered in October 2018.

The Tenant stated that she gave notice to end her tenancy by text on September 9, 2018 and the Landlord started showing the rental unit, but then she gave her notice in writing to end her tenancy on September 20, 2018. She advised that new tenants moved into the rental unit on October 1, 2018 and that the Landlord's evidence indicates that this is true.

The Landlord submitted that she locked up the rental unit at midnight on October 1, 2018 and had a cleaner start cleaning the rental unit the next day. She stated that the new tenants backed out of moving in on October 1, 2018, that they moved to another location, that they suggested other tenants that could move in, and that these other tenants moved into the rental unit on October 8, 2018.

The Landlord advised that she was seeking compensation in the amount of **\$200.00** for the cost to clean the rental unit at the end of the tenancy as she alleges that the Tenant did not do so adequately, and it was left filthy. She submitted that she paid a cleaner \$25.00 per hour and that it took her eight hours to clean the rental unit and rectify these issues. She submitted an invoice from the cleaner as documentary evidence and referred to the deficiencies in the condition inspection reports. She indicated that she submitted pictures and video demonstrating the condition of the rental unit; however, she could not directly point me to these files and stated that she "did not upload them so she does not know what they are named".

The Tenant refuted the Landlord's testimony with respect to the condition that she left the rental unit in. She submitted pictures taken on October 1, 2018 at 4:30 PM, demonstrating that she had cleaned the rental unit contrary to the Landlord's claims.

The Landlord advised that she was seeking compensation in the amount of **\$40.00** for the cost to remove refuse left at the side of the rental unit that belonged to the Tenant's boyfriend. As well, she indicated that she submitted evidence to support this; however,

she could not directly point me to these relevant files. She stated that there was an invoice titled "garbage removal".

The Tenant set up an account with a garbage disposal company, so she could have refuse disposed of and she referenced three invoices that she submitted as documentary evidence demonstrating that she paid for her own garbage removal. As such, she would have had no reason to leave any garbage behind. She also stated that the Landlord advised her that she did not have trash removal at the house, so the Tenant should just leave any garbage behind.

The Landlord advised that she was seeking compensation in the amount of **\$509.25** because the Tenant put a pool on the lawn, and the grass underneath it had died. She stated that she verbally allowed the Tenant to install this pool and told her where to put it, with the understanding that the Tenant would fix the damage at the end of the tenancy. She submitted that the Tenant made alterations to the yard without the Landlord's consent, that she left sand, refuse, and dog feces behind that had to be dealt with, and she submitted an invoice for the cost to fix these issues. She indicated that she submitted evidence to support this; however, she could not directly point me to these relevant files.

The Tenant advised that she did make changes to the landscaping of the yard, but she stated that there were no agreements to fix these changes at the end of the tenancy. She stated that the Landlord had a landscaper come in every week to do maintenance that the Tenant could complete; however, the Landlord had the landscaper complete them. She submitted that she drained the pool into the neighbour's yard and that some of the water likely flooded her own yard as well.

The Landlord stated that the grass died due to water restrictions in her municipality, but the grass has recovered now. She stated that an area where the Tenant used a tent still has not been fixed yet though.

The Landlord submitted that she is seeking compensation in the amount of **\$360.00** for the cost to patch and paint the walls. She stated that the Tenant had several pictures on the wall, that she mounted a TV, and that major patches and painting were necessary. She submitted that the painter charged \$35 per hour and there were six invoices for the work; however, she could not directly point me to these relevant files that supported these claims. She advised that the rental unit was last painted in February 2018.

The Tenant stated that it is not her belief that the rental unit was last painted in February 2018 as she was shown it on February 2, 2018 and the previous tenant had painted the closet purple. This closet was still purple when the Tenant moved in. She stated that she used sticky putty to hang pictures on the walls and she patched up and puttied areas with holes. She referred to pictures submitted as documentary evidence to demonstrate the condition of the rental unit at the end of the tenancy and stated that the rental unit was in the same shape as when she moved in.

The Landlord submitted that she is seeking compensation in the amount of **\$353.21** for the cost to replace the carpet in the bedroom as the Tenant's son admitted that his sister caused two big paint spills on the bedroom carpet. She stated that she saw the Tenant's daughter trying to clean up this paint. As well, she stated that the Tenant admitted that her dog had peed on the carpet and there was a big stain as a result of this. She could not directly point me to these relevant files that supported this claim. She stated that there was no carpet in the bedroom in early February 2018 as it was installed later in February 2018, before the Tenant moved in.

The Tenant stated that when she viewed the rental unit, the previous tenant's belongings were still there so she could not get a full view of the rental unit. She advised that she spoke to the current tenant and this person told her that despite a request to fix the carpet, the Landlord has no intention to rectify this issue. She refuted that her dog peed on the carpet and she stated that both the previous tenant and the current tenant have dogs.

### 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 Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed day. As

well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection report.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports. However, these sections pertain to a Landlords' right to claim for damage, and as the Landlord also applied for rent owing and issues which would not be considered solely damage claims, the Landlord still retains a right to claim against the 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 Tenant's forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenant, pursuant to section 38(6) of the *Act*. Furthermore, this Section requires that the Landlord only be allowed to claim against the pet damage deposit for damage caused by pets.

The undisputed evidence is that the forwarding address in writing was provided to the Landlord on October 1, 2018. Furthermore, the Landlord made her Application within the 15-day frame to claim against the deposits. As the Landlord was entitled to claim against the security deposit still, and as she complied with Section 38 (1) of the *Act* by making a claim within 15 days, I find that she has complied with the requirements of the *Act* and therefore, the doubling provisions do not apply. Furthermore, as the Landlord claimed to keep the pet damage deposit and a portion of her claims pertain to alleged pet damage, I am satisfied that she was entitled to claim against this deposit as well, and the doubling provisions do not apply in this instance either.

With respect to the Landlords' 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."

Regarding the Landlord's claim for the portion of October 2018 rent lost, Section 45 of the *Act* requires that a Tenant provide a full month's written notice to end a periodic tenancy. As the undisputed evidence before me is that the Tenant provided written notice dated September 20, 2018 to end the tenancy, the effective date of her notice would have been October 31, 2018 and the Tenant would have been responsible for all of October 2018 rent. As the Tenant gave up vacant possession of the rental unit, prior to this date, the Landlord was not required to re-rent the unit until November 1, 2018. However, based on the evidence before me, I am satisfied that the Landlord mitigated the loss that the Tenant would be responsible for and re-rented the premises on October 8, 2018. As such, I am satisfied that the Landlord has substantiated a claim for outstanding rent, and I grant the Landlord a monetary award in the amount of **\$451.61** to cover the rental loss that she suffered in October 2018.

With respect to the Landlord's claim for the cost to clean the rental unit in the amount of the amount of \$200.00, I find it important to note that as the Landlord did not comply with the *Act* and provide the Tenant with a final opportunity to conduct a move-in or move-out inspection report, I do not have either report before me that I can rely on. While the Landlord submitted pictures and video as documentary evidence, she could not specifically point me to the exact pictures or videos that supported her claims on this point. On the contrary, the Tenant provided pictures that she alleges refutes the Landlord's claims. When attempting to sort through the Landlord's evidence and then compare it to the Tenant's, I find the Tenant's pictures to be framed in such a way that does not fully depict the entirety of the rental unit. Based on the evidence before me, I am satisfied on a balance of probabilities that the Tenant, more likely than not, did not leave the rental unit in a suitably clean condition for re-rental. However, the burden of proof is on the Landlord to substantiate her claims. I find that the absence of any inspection reports and the inability to specifically point to evidence to support this claim reduces, in my mind, the amount of the claim that the Landlord sufficiently substantiated. As such, I am satisfied that the Landlord has provided enough evidence to corroborate a nominal monetary award in the amount of **\$100.00** for this claim only.

Regarding the Landlord's claims for the costs associated with refuse removal in the amount of \$40.00, I have found some of the Landlord's evidence of refuse left behind. The Tenant submitted receipts from a disposal company; however, her third receipt indicates that the date of payment received was August 1, 2018. As she gave up vacant possession in October 2018, I do not find that she has provided any evidence that she paid for refuse removal in October 2018. As such, I am satisfied that the Landlord has substantiated a monetary award in the amount of **\$40.00** for this claim.

With respect to the Landlord's claim for compensation in the amount of \$509.25 because the Tenant put a pool on the lawn, altered the exterior landscaping, did not repair the damage, and did not clean up the yard or dog feces, from the evidence and testimony provided, it appears as if both parties agreed verbally to the installation of the pool and some changes in the yard. I find it reasonable that the Landlord should have expected damage to the grass when she agreed to the pool. As well, I find that the Tenant is responsible for leaving the rental unit and yard in as close to the same condition as it was rented in. Based on the evidence before me, I am satisfied that both parties bear some fault on this claim. As such, I find that the Landlord should be awarded a nominal monetary award of half her claim, in the amount of **\$254.62**.

Regarding the Landlord's claims for the costs associated with patching and painting the walls in the amount of \$360.00, again, I do not have either inspection report before me that I can rely on. Although the Landlord submitted pictures and video as documentary evidence, she could not specifically point me to the exact pictures or videos that supported her claims on this point. The Tenant provided her own pictures to contradict the Landlord's claims. When sifting through the Landlord's evidence and then comparing it to the Tenant's, I do not find that the Landlord has met the burden of proof to substantiate the full amount that she is claiming for. Based on the evidence before me, I am only satisfied that the Landlord has provided enough evidence to corroborate a nominal monetary award in the amount of **\$75.00** to repaint and patch the walls.

Finally, with respect to the Landlord's claim for the cost associated with replacing the bedroom carpet, in the amount of \$353.21, when reviewing the evidence, I heard a male voice in a video acknowledging being responsible for the paint on the carpet. As well, there is paint visible on the carpet in the Tenant's photos. Consequently, I am satisfied that the Landlord should be awarded a monetary award in the amount of **\$353.21** for the cost associated with replacement of the carpet.

As the Landlord was partially successful in her claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit and pet damage deposit in satisfaction of the debts outstanding.

As the Tenant's Application was dismissed and as she was not successful in her claims, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.



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

**Calculation of Monetary Award Payable by the Landlord to the Tenant**

Partial rent for October 2018	-\$451.61
Cleaning	-\$100.00
Disposal of refuse	-\$40.00
Yard damage, repair, and cleanup	-\$254.62
Patching and painting	-\$75.00
Carpet replacement	-\$353.21
Filing fee	-\$100.00
Security deposit	\$1,000.00
Pet damage deposit	\$400.00
<b>TOTAL MONETARY AWARD</b>	<b>\$25.56</b>

Conclusion

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

The Tenant is provided with a Monetary Order in the amount of **\$25.56** 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: June 19, 2019

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Residential Tenancy Branch