



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL-S, MNDCL-S, FFL

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for damage to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The landlord and both tenants attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all testimony and evidence provided that is relevant to this application has been reviewed and is considered in this Decision.

### Issues to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the rental unit or property?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on April 1, 2019 and reverted to a month-to-month tenancy after April 30, 2020, which ultimately ended on August 1,

2020. Rent in the amount of \$1,300.00 was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$650.00, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is the upper level of a house, and the lower level is also tenanted. A copy of the tenancy agreement and Addendum have been provided as evidence for this hearing.

The landlord further testified that a move-in condition inspection report was completed at the beginning of the tenancy. However, one of the tenants vacated the rental unit on or about July 29, 2020, and the landlord allowed the other tenant to stay until August 1, 2020. The landlord was going to show the rental unit that day, but the tenant refused entry. Police were called and the landlord agreed to return the next day for a move-out condition inspection at 1:00. Nothing was given in writing, but verbally scheduled in front of the police. The landlord returned the following day and waited until 1:00, but the tenants didn't show up, so the landlord and his son completed the move-out condition inspection report. Copies of the move-in and move-out condition inspection reports have been provided for this hearing.

The landlord has also provided a Monetary Order Worksheet setting out the following claims:

- \$593.92 for replacement of a broken window;
- \$588.50 for front entrance repair;
- \$161.11 for yard clean-up;
- \$140.00 for house cleaning;
- \$203.42 for paint and supplies;
- \$100.00 for labour to repair holes in walls;
- \$750.00 for labour for painting;
- \$346.66 pro-rated rent for not being able to re-rent.

The landlord also claims \$100.00 for recovery of the filing fee.

The landlord also testified that an error exists in the Monetary Order Worksheet, in that the quote provided for the front room window and back rear door is \$513.92, which includes GST, not \$593.92. Photographs have been provided for this hearing.

The move-in report shows no damage to the dura-deck, however it is now full of holes which the landlord believes were caused by chipping ice with a shovel. The landlord purchased the house in 2018 and is not sure how old the dura-deck is, however a quote has been provided for the repair.

The landlord hired someone to complete the yard care, including grass cutting, filling holes left by the tenants' dog, cleaning up feces from the dog, cleaning the back deck and garbage from the shed and house. A copy of an Invoice has been provided for this hearing, as well as photographs.

The landlord paid his daughter \$140.00 for cleaning cigarette butts, beer cans and stuff left in the fridge and freezer.

The rental unit was painted about 2 years before the landlord purchased the home in 2018, so it was last painted in about 2016. Numerous holes were left in the walls by the tenants.

The landlord also testified that the photographs were taken on August 2, 2020, and the tenants have not provided the landlord with a forwarding address in writing and have not served the landlord with an Application for Dispute Resolution claiming the security deposit.

The landlord was not able to re-rent until the painting, cleaning and other repairs were completed, and was re-rented for August 1, 2020, but with a pro-rated amount for the first month of the new tenancy, and the landlord claims 8 days of lost rental revenue.

**The first tenant (JH)** testified that the landlord did not contact her with respect to scheduling a move-out condition inspection.

There is no need to repair the dura-deck at the front door; it looked the same at move-out as it did at move-in.

The tenant also disputes re-painting the entire house, and testified that the shelf in the bathroom was not installed properly at move-in. The landlord told the tenants not to put anything heavy on it, and it didn't hold and fell off.

The shed was shared with the tenants in the lower level of the rental home, and the items of garbage in the landlord's photographs did not belong to the tenants. The other tenants stored bikes and boxes in the shed, and also damaged a bumper that the tenants had stored there.

The tenant also disputes the landlord's testimony that the photographs were taken on August 2, 2020, and referred to a photograph showing a green car. The tenant testified that was the first thing that the tenants moved so that they had room in the drive-way to do the moving.

**The second tenant (TG)** testified that the repair to the window and the frame and window on the door are not contested.

The dura-deck did not need replacing, and was no different at the beginning of the tenancy than at the end.

The tenant also testified that the parties didn't go over the Addendum at the beginning of the tenancy, and the tenants asked about hanging pictures and the landlord agreed. The landlord seems defensive about it now, but at the beginning of the tenancy he had no problem with it.

The tenant also disputes 8 days of rent for the landlord's standards to make the rental unit re-rentable. The tenant was given until August 1, 2020 by the landlord to move, but the landlord showed up on July 29, 2020 and had no reason to be there. Police arrived and the tenant told them that the landlord was trying to enter. He just showed up pumping his chest and the house was not yet empty.

### Analysis

Firstly, where a party makes a monetary claim against another party for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists because of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

The *Residential Tenancy Act* requires a landlord to give a tenant at least 2 opportunities, in writing, to complete the move-out condition inspection report, which was not done in this case. If a landlord fails to comply with the *Act* or the regulations in that regard, the landlord's right to claim against the security deposit for damages is extinguished, and I so find.

The *Act* also states that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy, however where a landlord has not given a tenant sufficient opportunity to conduct the inspection together, little weight can be given to the move-out condition inspection report. In this case, the tenant testified that the landlord's testimony about when the landlord's photographs were taken is not correct, in that a green car exists in the photographs that wasn't there on August 2, 2020 when the landlord said the photographs were taken. The landlord did not dispute that testimony.

The tenants do not dispute the damage to the window and door, and I am satisfied that the landlord has established the **\$513.92** claim.

With respect to the landlord's claim of **\$161.11** for yard clean-up and **\$140.00** for house cleaning, the photographs show that the tenants did not do their due diligence in cleaning and removing garbage or mowing the lawn. Although the tenants dispute the date that the photographs were taken, the tenants have not provided any evidence, and I find that the landlord has established those claims.

With respect to the landlord's claims for paint, supplies, repairing holes in walls and painting, I refer to Residential Tenancy Policy Guideline #40 which puts the useful life of interior paint at 4 years. Any monetary award for damages is meant to put the claiming party in the same position as the party would be if no damage or loss had occurred. In other words, to provide the landlord with full costs to fill holes and paint would provide the landlord with a brand new paint job, when the landlord certainly would not have a brand new paint job if no damage or loss existed at the end of the tenancy. Therefore, I dismiss the landlord's claims for painting, painting supplies and repairing holes.

The same applies to the claim for dura-deck. I have reviewed the photographs of the landlord, and it is clear that the dura-deck is far from a new dura-deck. To have the tenants replace it would give the landlord a new dura-deck, when it certainly wasn't new to begin with, and I dismiss the landlord's claim for new dura-deck.

The tenants gave the landlord notice to end the tenancy, and given that rent is payable on the 1<sup>st</sup> day of each month, the tenancy ought to have ended on July 31, 2020. However, the landlord agreed to allow the tenant to stay until August 1, 2020, thereby failing to mitigate any loss of rental revenue for August 1, 2020.

Although the rental unit needed painting at the end of the tenancy, I am not satisfied that it wouldn't have been required in any event, and the landlord has not satisfied me how much time beyond August 1, 2020 it would have been before new tenants moved in. I dismiss the landlord's claim for loss of rental revenue.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the **\$100.00** filing fee.

The landlord testified that the tenants have not provided the landlord with a forwarding address in writing, and the tenants did not dispute that. The landlord has applied to keep the security deposit. Having found that the landlord's right to claim against the security deposit for damages is extinguished, the tenants have 1 year from the end of the tenancy to provide the landlord with a forwarding address in writing. If the tenants fail to do so, the landlord may keep the security deposit. If the tenants provide the landlord with a forwarding address in writing, not in a text message or email, the landlord will have 15 days from the date the landlord receives the tenants' forwarding

address in writing to return the security deposit in full or make an Application for Dispute Resolution claiming against it. If the landlord fails to do either, the landlord must repay double the amount to the tenants.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$915.03**.

This order is final and binding and may be enforced.

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: December 21, 2020

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Residential Tenancy Branch