



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

On September 20, 2020, the Landlords applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards these debts pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Landlords and both Tenants attended the hearing. All parties in attendance provided a solemn affirmation.

The Landlords advised that they served a Notice of Hearing and evidence package to each Tenant by registered mail on September 25, 2020. The Tenants confirmed that they received one package and ignored the second package. Based on this undisputed testimony, I am satisfied that the Tenants were sufficiently served the Landlords’ Notice of Hearing and evidence packages. Furthermore, as service of this evidence complied with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted all of the Landlords’ evidence and will consider it when rendering this Decision.

The Tenant advised that they did not submit any evidence for consideration on this file.

All parties 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

- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to apply the security deposit towards these debts?
- Are the Landlords 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.

All parties agreed that the most current tenancy agreement started on October 1, 2019 and the tenancy ended when the Tenants gave up vacant possession of the rental unit on August 31, 2020. Rent was established at \$1,800.00 per month and was due on the first day of each month. A security deposit of \$900.00 was also paid. A copy of the tenancy agreement was submitted as documentary evidence.

They also agreed that neither a move-in inspection report nor a move-out inspection report was ever conducted.

The Tenants advised that they provided their forwarding address to the Landlords by text message on September 19, 2020. The Landlords confirmed that this was the address they used to make this Application.

The Landlords advised that they are seeking compensation in the amount of **\$900.00** because the Tenants were responsible for causing a garage fire that burned down the garage on July 25, 2020. According to the police and fire reports submitted as documentary evidence, the fire was caused by the Tenants accidentally placing a lawn mower in the garage after being used. This lit some flammable materials and resulted in the garage being razed. As well, these reports indicated that the Tenants had a significant number of marijuana plants in or around the garage. This prevented the Landlords from being able to ensure the rental unit anymore. They estimated that it would cost in excess of \$90,000.00 to fix the garage.

In addition, they stated that the Tenants did not leave the rental unit in a re-rentable state at the end of the tenancy. There was lots of work and cleaning required to fix the rental unit. Moreover, there was damage to the flooring and walls, and the yard was left

unkempt and unattended. They also claimed that there were parts missing from the barbeque.

The Tenants advised that it was their belief that the security deposit would be applicable to the rental unit and not the garage; however, they agreed that the garage was rented to them as part of the tenancy. They confirmed that they were responsible for accidentally starting the garage fire and that they had no insurance to pay for this. Regarding the condition of the rental unit at the end of the tenancy, they stated that they gave up vacant possession of the rental unit early as a way to assist the Landlords after they had received a notice to end the tenancy. They submitted that they would have cleaned if they had more time. They reiterated that the Landlords did not conduct any inspection reports as required by the *Act*.

### Analysis

Upon consideration of the testimony 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 Landlords and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlords and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed day. As well, the Landlords must offer at least two opportunities for the Tenants to attend the move-out inspection report.

Section 21 of the *Regulations* outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlords or the Tenants have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlords to claim against a security deposit for damage is extinguished if the Landlords do not complete the condition inspection reports in accordance with the *Act*.

I find it important to note that the Landlords are required to complete the inspection reports in accordance with the *Act*. As well, the *Act* requires that it is the Landlords' responsibility to coordinate the inspections if they want to ensure their ability to make a claim against the deposit.

As the undisputed evidence before me is that the Landlords failed to conduct the required condition inspection reports, I find that the Landlords have extinguished their right to claim against the security deposit for damage.

Section 38 of the *Act* outlines how the Landlords must deal with the security deposit at the end of the tenancy. With respect to the Landlords' claim against the Tenants' security deposit, Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposit. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposit, and the Landlords must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, the Landlords received the Tenants' forwarding address on September 19, 2020. Furthermore, the Landlords made an Application, using this same address, to attempt to claim against the deposit on September 20, 2020. While the Landlords made this Application within 15 days of receiving the Tenants' forwarding address in writing, the Landlords extinguished their right to claim against the deposit as they failed to comply with the *Act* with respect to conducting any inspection reports. However, I note that extinguishment applies to damage claims. As the Landlords sought compensation for missing barbeque parts, I do not consider these to be damage to the rental unit. As such, I am satisfied that the doubling provisions do not apply to the security deposit in this instance.

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 Landlords' claim for compensation in the amount of \$900.00 for damages to the rental unit, the undisputed evidence before me is that the garage was rented as part of the tenancy and that the Tenants were responsible for burning it down. Despite the total cost of the damages to the rental unit exceeding \$900.00, as the Landlords are only seeking compensation in this amount, I am satisfied from the undisputed evidence that the Landlords have substantiated their claim. As such, I grant the Landlords a monetary award in the amount of **\$900.00** to satisfy their claim.

I find it important to note that the Landlords advised during the hearing that satisfaction of this claim would mean that they would not make any future claims for compensation against the Tenants associated with damage to the rental unit. As such, the Landlords are prohibited from making any future claims against the Tenants for damage associated with the rental unit. However, the Landlords are still entitled to make any future claims for other issues, like lost rent for example, against the Tenants.

As the Landlords were successful in these claims, I find that the Landlords are 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 Landlords to retain the security deposit in partial satisfaction of these claims.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenants to the Landlords**

Cost of damages to the rental unit	\$900.00
Filing fee	\$100.00
Security deposit	-\$900.00
<b>TOTAL MONETARY AWARD</b>	<b>\$100.00</b>

Conclusion

The Landlords are provided with a Monetary Order in the amount of **\$100.00** 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: January 11, 2021

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Residential Tenancy Branch