



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, MNDL-S, MNRL-S, FFL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on July 28, 2021 (the “Application”). The Landlord applied as follows:

- For compensation for monetary loss or other money owed
- For compensation for damage to the rental unit
- To recover unpaid rent
- To keep the security and pet damage deposits
- For reimbursement for the filing fee

K.S. and P.P. appeared at the hearing for the Landlord. Nobody appeared at the hearing for the Tenants. I explained the hearing process to K.S. and P.P. I told K.S. and P.P. they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). K.S. and P.P. provided affirmed testimony.

During the hearing, K.S. advised that the Landlord is seeking more than the \$2,864.30 sought on the Application. K.S. advised that the Landlord did not file an amendment changing the amount sought. I advised K.S. that I could only consider the amount requested on the Application and that the Landlord had to amend the Application if they wished to seek a higher amount (see rules 4.1 and 6.2).

The Landlord submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

K.S. testified as follows. The hearing package was sent to the Tenants on August 13, 2021 by registered mail to a forwarding address provided by the Tenants on a notice to vacate in evidence. Tracking Numbers 860 and 856 relate to the August 13, 2021 package. The hearing package and Landlord's evidence were sent to the Tenants on January 21, 2022 by registered mail to the forwarding address. Tracking Numbers 204 and 195 relate to the January 21, 2022 package.

The Landlord submitted registered mail receipts for Tracking Numbers 860, 856, 204 and 195.

I looked Tracking Number 860 up on the Canada Post website which shows the package was delivered August 17, 2021. I looked Tracking Number 856 up and the website shows the package was delivered August 16, 2021. I looked Tracking Numbers 204 and 195 up on the website which shows these packages were unclaimed and returned to the sender.

Based on the undisputed testimony of K.S., registered mail receipts and Canada Post website information, I find the following. The Tenants were served with the hearing package in accordance with section 89(1)(d) of the *Act* on August 13, 2021. The Tenants received the hearing packages August 16 and 17, 2021. The Tenants were served with the Landlord's evidence in accordance with section 88(d) of the *Act* on January 21, 2022. The Tenants cannot avoid service by failing to pick up registered mail and are deemed to have received the evidence January 26, 2022 pursuant to section 90(a) of the *Act*. The Landlord complied with rule 3.1 of the Rules in relation to the timing of service of the hearing package. The Landlord complied with rule 3.14 of the Rules in relation to the timing of service of their evidence.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. K.S. and P.P. were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to compensation for damage to the rental unit?

3. Is the Landlord entitled to recover unpaid rent?
4. Is the Landlord entitled to keep the security and pet damage deposits?
5. Is the Landlord entitled to reimbursement for the filing fee?

#### Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Unpaid July 2021 rent + parking	\$1,144.30
2	July 2021 late fee	\$25.00
3	Flooring damage	\$900.00
4	Patio blinds damaged	\$150.00
5	Bedroom blinds missing	\$75.00
6	Bathroom lights	\$20.00
7	Garbage removal	\$200.00
8	Cleaning	\$150.00
9	Closet shelf bent	\$100.00
10	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$2,864.30</b>

A written tenancy agreement was submitted as evidence. The tenancy started October 01, 2016 and was for a fixed term of six months. The Tenants paid a \$512.50 security deposit and \$200.00 pet damage deposit. Rent was due on the first day of each month.

K.S. testified as follows.

Rent at the end of the tenancy was \$1,119.30 per month.

The Tenants moved out of the rental unit July 22, 2021.

The Tenants provided their forwarding address to the Landlord in writing on a notice to vacate which was received on June 01, 2021.

The Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy and the Tenants did not agree to the Landlord keeping the security or pet damage deposits.

Both parties did a move-in inspection.

The Tenants refused to attend the move-out inspection. P.P. did the move-out inspection on their own. The Landlord did offer the Tenants two opportunities, one on the RTB form, to do the move-out inspection. The RTB form was posted to the door of the rental unit. A copy of the RTB form has not been submitted.

The Landlord claimed against the pet damage deposit because the amount of damages claimed exceeds the amount of the security and pet damage deposits. The Landlord is not claiming for any pet related damage.

K.S. testified as follows in relation to each item claimed.

***#1 Unpaid July 2021 rent + parking \$1,144.30***

The Landlord received notice ending the tenancy from the Tenants on June 01, 2021 which was effective July 31, 2021. The Tenants moved out of the rental unit July 22, 2021. The Tenants did not pay rent for July of 2021.

The Tenants rented a parking stall for \$25.00 per month and failed to pay this for July of 2021. The Parking Agreement is in evidence.

***#2 July 2021 late fee \$25.00***

The Tenants failed to pay rent for July 2021 and therefore the late fee set out in term 7 of the tenancy agreement applies. The Landlord posted a 10 Day Notice on the Tenants' door in relation to rent for July 2021.

***#3 Flooring damage \$900.00***

In May of 2021, the Tenants left their kitchen tap on which resulted in a flood that caused damage to the flooring in the rental unit. The flooring was in good condition on move-in. The flooring was new as of September 2015 which is shown in the invoice submitted. The Landlord had to replace the flooring at the end of the tenancy and paid

\$1,800.52 for this as shown in the invoice submitted. The Landlord is claiming \$900.00 for this item.

***#4 Patio blinds damaged \$150.00***

The Tenants damaged the patio blinds during the tenancy and left them laying on the patio at the end of the tenancy. The photos in evidence show the damaged blinds. The blinds could not be fixed and had to be replaced. The Landlord ended up replacing the blinds with curtains which were installed by a maintenance person. The Work Order for the labour, curtains and rod is in evidence and shows the cost of \$150.00.

***#5 Bedroom blinds missing \$75.00***

The bedroom blind was in the rental unit at the start of the tenancy and missing at the end of the tenancy as shown in the photos. The blind had to be replaced and the cost of this is shown in the evidence. An invoice in evidence shows that the blind had been replaced in July of 2015. The blind should have lasted 10 years.

***#6 Bathroom lights \$20.00***

The Tenants left burnt out light bulbs in the bathroom at the end of the tenancy. A Work Order in evidence shows the cost to replace the light bulbs.

***#7 Garbage removal \$200.00***

The Tenants left numerous items in the rental unit at the end of the tenancy as shown in the photos submitted. The Landlord hired people to come and remove the items and take the items to the dump. There is a Work Order in evidence for the garbage removal.

***#8 Cleaning \$150.00***

The Tenants had not cleaned the rental unit at the end of the tenancy as shown in the photos submitted. There is a Work Order in evidence showing a cleaner was sent to clean the rental unit at a cost of \$150.00 which includes time and supplies. Hiring any cleaner would have cost at least \$150.00.

**#9 Closet shelf bent \$100.00**

The Tenants damaged a closet shelf during the tenancy as shown in the photos submitted. The Landlord has not been able to find a replacement shelf but has been given an estimate that it will cost \$100.00 to replace.

***Documentary Evidence***

The Landlord submitted the following relevant documentary evidence:

- Tenancy Agreement
- Parking Agreement
- Leaseholder Change Agreement
- Notices of Rent Increase
- Notice to vacate
- 10 Day Notice
- Rent ledger
- Condition Inspection Report (the "CIR")
- Work Orders
- Purchase Orders
- Invoices
- Photos

Analysis

***Security and pet damage deposits***

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to security and pet damage deposits if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Based on the undisputed testimony of K.S. and the CIR, I accept that the Tenants participated in the move-in inspection and therefore did not extinguish their rights in relation to the security or pet damage deposits pursuant to section 24 of the *Act*.

I accept that the Tenants did not participate in the move-out inspection because this is supported by the CIR. I do not accept that the Landlord provided the Tenants an opportunity to do the move-out inspection on the approved RTB form because the Landlord did not submit a copy of such a form. Therefore, I do not find that the Tenants extinguish their rights in relation to the security or pet damage deposits pursuant to section 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their right to claim against the security or pet damage deposits because extinguishment only relates to claims that are solely for damage to the rental unit and the Landlord has claimed for unpaid rent, parking, a late fee and cleaning, none of which are damage to the rental unit.

I accept the undisputed testimony of K.S. that the tenancy ended July 22, 2021. This is supported by the documentary evidence submitted.

I accept the undisputed testimony of K.S. that the Landlord received the Tenants' forwarding address June 01, 2021. This is supported by the documentary evidence submitted.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing to repay the security and pet damage deposits or claim against them. Here, the Landlord had 15 days from July 22, 2021. The Application was filed July 28, 2021, within time.

However, Policy Guideline 31 addresses pet damage deposits and states:

The landlord may apply to an arbitrator to keep all or a portion of the deposit **but only to pay for damage caused by a pet**. The application must be made within the later of 15 days after the end of the tenancy or 15 days after the tenant has provided a forwarding address in writing. (emphasis added)

K.S. acknowledged that the Landlord did not claim against the pet damage deposit for pet related damage and therefore the Landlord was not permitted to claim against the pet damage deposit. The Landlord had to return the pet damage deposit within 15 days of July 22, 2021, which the Landlord did not do. In the circumstances, the Landlord did not comply with section 38(1) of the *Act* in relation to the pet damage deposit. Given

this, and pursuant to section 38(6) of the *Act*, the Landlord cannot claim against the pet damage deposit and owes the Tenants double the pet damage deposit. The Landlord therefore owes the Tenants \$400.00. No interest is owed on the pet damage deposit because the amount of interest owed has been 0% since 2009.

### ***Compensation***

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

### ***#1 Unpaid July 2021 rent + parking \$1,144.30***

I accept the undisputed testimony of K.S. and based on it, as well as the documentary evidence submitted, I find the following.



Section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45(1) of the *Act* states:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 53 of the *Act* states:

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

The Tenants' notice to vacate was effective July 31, 2021 pursuant to sections 45 and 53 of the *Act*. The Tenants were responsible to pay rent up until July 31, 2021. Further, the Tenants only vacated the rental unit July 22, 2021 and therefore lived in the rental unit for the majority of July of 2021. I accept that the Tenants were required to pay \$1,119.30 in rent for July of 2021. I accept that the Tenants did not pay rent for July of 2021. There is no evidence before me that the Tenants had authority under the *Act* to withhold rent for July of 2021. The Landlord is entitled to \$1,119.30.

I accept that the Tenants were required to pay \$25.00 per month for parking pursuant to the Parking Agreement. I accept that the Tenants did not pay for parking for July of 2021. The Landlord is entitled to \$25.00.

**#2 July 2021 late fee \$25.00**

I accept the undisputed testimony of K.S. and based on it, as well as the documentary evidence submitted, I find the following.

Section 7 of the *Regulations* states:

7 (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent...

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

Term 7 of the tenancy agreement sets out a \$25.00 charge for late payment of rent. I accept that the Tenants did not pay rent for July of 2021 and therefore the charge for late payment of rent applies. The Landlord is entitled to the \$25.00.

**#3 Flooring damage \$900.00**

I accept the undisputed testimony of K.S. and based on it, as well as the documentary evidence submitted, I find the following.

Section 37 of the *Act* states:

(2) 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...

I accept that the Tenants damaged the flooring in the rental unit in breach of section 37 of the *Act*. I accept that the Landlord had to replace the flooring. I accept that it cost

the Landlord more than \$900.00 to replace the flooring. I find the amount sought reasonable and note that the Tenants did not appear to dispute the amount. The Landlord is entitled to \$900.00.

**#4 *Patio blinds damaged \$150.00***

I accept the undisputed testimony of K.S. and based on it, as well as the documentary evidence submitted, I find the following.

Section 37 of the *Act* applies to this claim as well.

I accept that the Tenants damaged the patio blinds in breach of section 37 of the *Act*. I accept that the Landlord had to replace the patio blinds. I accept that it cost the Landlord \$150.00 to replace the patio blinds. I find the amount sought reasonable and note that the Tenants did not appear to dispute the amount. The Landlord is entitled to \$150.00.

**#5 *Bedroom blinds missing \$75.00***

I accept the undisputed testimony of K.S. and based on it, as well as the documentary evidence submitted, I find the following.

Section 37 of the *Act* applies to this claim as well.

I accept that the Tenants caused the bedroom blind to be missing at the end of the tenancy and that this is a breach of section 37 of the *Act*. I accept that the Landlord had to replace the bedroom blind. I accept that it cost the Landlord \$75.00 to replace the bedroom blind. I find the amount sought reasonable and note that the Tenants did not appear to dispute the amount. The Landlord is entitled to \$75.00.

**#6 *Bathroom lights \$20.00***

I accept the undisputed testimony of K.S. and based on it, as well as the documentary evidence submitted, I find the following.

Section 37 of the *Act* applies to this claim as well.

I accept that the Tenants did not replace burnt out light bulbs in the bathroom at the end of the tenancy and that this is a breach of section 37 of the *Act*. I accept that the Landlord had to replace the burnt out light bulbs. I accept that it cost the Landlord \$20.00 to replace the light bulbs. I find the amount sought reasonable and note that the Tenants did not appear to dispute the amount. The Landlord is entitled to \$20.00.

**#7 Garbage removal \$200.00**

I accept the undisputed testimony of K.S. and based on it, as well as the documentary evidence submitted, I find the following.

Section 37 of the *Act* applies to this claim as well.

I accept that the Tenants left numerous items in the rental unit at the end of the tenancy in breach of section 37 of the *Act*. I accept that the Landlord had to hire people to attend to remove the items and take the items to the dump. I accept that it cost the Landlord \$200.00 to have the items removed and taken to the dump. I find the amount sought reasonable and note that the Tenants did not appear to dispute the amount. The Landlord is entitled to \$200.00.

**#8 Cleaning \$150.00**

I accept the undisputed testimony of K.S. and based on it, as well as the documentary evidence submitted, I find the following.

Section 37 of the *Act* applies to this claim as well.

I accept that the Tenants did not clean the rental unit at the end of the tenancy in breach of section 37 of the *Act*. I accept that the Landlord had to have cleaners attend to clean the rental unit. I accept that it cost the Landlord \$150.00 to have cleaners clean the rental unit. I find the amount sought reasonable and note that the Tenants did not appear to dispute the amount. The Landlord is entitled to \$150.00.

**#9 Closet shelf bent \$100.00**

I accept the undisputed testimony of K.S. and based on it, as well as the documentary evidence submitted, I find the following.

Section 37 of the *Act* applies to this claim as well.

I accept that the Tenants damaged a closet shelf during the tenancy in breach of section 37 of the *Act*. I accept that the Landlord has to replace the shelf and that it will cost the Landlord \$100.00 to do so. I find the amount sought reasonable and note that the Tenants did not appear to dispute the amount. The Landlord is entitled to \$100.00.

#### **#10 Filing fee \$100.00**

Given the Landlord was successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

#### **Summary**

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Unpaid July 2021 rent + parking	\$1,144.30
2	July 2021 late fee	\$25.00
3	Flooring damage	\$900.00
4	Patio blinds damaged	\$150.00
5	Bedroom blinds missing	\$75.00
6	Bathroom lights	\$20.00
7	Garbage removal	\$200.00
8	Cleaning	\$150.00
9	Closet shelf bent	\$100.00
10	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$2,864.30</b>

The Landlord is considered to hold the security deposit amount and double the pet damage deposit amount for a total of \$912.50 in deposits. The Landlord can keep the \$912.50 pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$1,951.80 pursuant to section 67 of the *Act*.

#### **Conclusion**

The Landlord is entitled to \$2,864.30. The Landlord can keep the \$912.50 in deposits. The Landlord is issued a Monetary Order for the remaining \$1,951.80. This Order must

be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: March 16, 2022

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Residential Tenancy Branch