



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GOLDEN GOALS SERVICES  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

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

### **Introduction**

This hearing was reconvened from an adjourned hearing originally scheduled for November 23, 2021.

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

- a monetary order for unpaid rent, and compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

These matters were originally assigned to, and heard by, a different Arbitrator. The Arbitrator had started the hearing, and had to adjourn the hearing due to insufficient time to complete the hearing. Unfortunately, due to unforeseen circumstances, that Arbitrator is unable to attend the reconvened hearing, and accordingly this application was re-assigned to myself. As noted to both parties in the hearing, as I was not in attendance at the previous hearing, the hearing must be heard as a new hearing before myself. I thank both parties for their patience while waiting for a resolution to their dispute.

The landlord was represented by their agents HA and OA, in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

The tenants confirmed receipt of the landlord's application for dispute resolution ('Application'). In accordance with section 89 of the *Act*, I find that the tenants duly

served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed with the hearing.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for money owed or monetary losses?

Is the landlord entitled to recover the filing fee for this application from the tenants?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on July 1, 2020, and was to end on June 30, 2021. Monthly rent was set at \$1,575.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$790.00, which the landlord still holds. The landlord testified that the tenants moved out on or about April 2, 2020 without notice, and without paying the April 2020 rent. The landlord testified that the note submitted in evidence by the tenants was never provided to the landlord, and the landlord was not aware of the move-out until the landlords had sent a text message to the tenants reminding them to pay the April 2020 rent. The landlord testified that the tenants had left the door unlocked and keys inside. The landlord testified that they had to perform the move-out inspection in the absence of the tenants despite their attempts to contact the tenants to arrange a time.

The landlord is requesting monetary compensation as follows:

Loss of rental income (April 2020-June 2020)	\$4,725.00
Stolen television	479.35
Stolen Smart box	41.95
Cleaning	200.00
Replacement of kitchen cabinet door	75.00 plus gst
Removal of garbage and junk	450.00 plus gst
Replacement of broken blinds	360.00 plus gst
Paint	240.00 plus gst
Filing Fee	100.00
<b>Total Monetary Award Requested</b>	<b>\$6,827.55</b>

The landlord testified that they were able to advertise and re-rent the rental unit for January 1, 2021 for the same monthly rent. The landlord testified that although they had submitted estimates, the actual cost to clean and repair the rental unit exceeded the estimates. The landlord testified that the rental unit was renovated a year prior to the tenants moving in.

The landlord testified that the tenants abandoned the rental unit, and failed to leave the rental unit in reasonably clean and undamaged condition. The landlord testified that the tenants also stole the television and smart box. The landlord submitted photos of the rental unit, estimates and receipts, as well as a copy of the move-in and move-out inspection report.

The tenants testified that they provided their written notice to end tenancy on February 28, 2020 by leaving the note under the boiler room door. The tenants acknowledged in the hearing that they did not have proof of service.

The tenants testified that they moved out at the end of March 2021 due to safety concerns, and unaddressed repairs. The tenants submitted photos which they state was taken at the beginning of the tenancy, as well as a copy of a move-in inspection report, which is not identical to the one the landlord had submitted. The tenants deny causing the damage, and argued that the blinds were old and already broken. The tenants testified that they had moved out of province, and were unable to attend a move-out inspection. The tenants also dispute the landlord's monetary claim for lost rent as the landlord claimed three months, but actually only suffered a loss for the months of April and May 2020, which is two months.

The tenants deny that the landlords had provided them with a television smart box, and notes that the television was not a Toshiba, but another brand.

### **Analysis**

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss

Section 44 of the *Residential Tenancy Act* reads in part as follows:

**44** (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

*(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;*

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

**45** (2) *A tenant may end a fixed term 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,*

*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

*(c) 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.*

I find that the tenants did not end the tenancy in a manner that complies with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenants in regards to this tenancy. The tenants moved out earlier than the date specified in the tenancy agreement.

Although the tenants testified that they had given notice on February 28, 2020, the landlord denies having received any notice from the tenants. Regardless of whether the tenants gave proper notice, the evidence is clear that the tenants did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenants vacated the rental unit contrary to Sections 44 and 45 of the *Act*. I must now consider whether the landlord is entitled to the losses claimed.

As confirmed by the landlord, they were able to re-rent the rental unit for the same monthly rent as of June 1, 2020. As a result of the early termination of this fixed-term

tenancy, the landlord lost two month's rent. I therefore allow the landlord's claim for lost rental income for the months of April and May 2020.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear. As stated above, the onus is on the applicant to support their claims.

The tenants disputed the claims for the broken blinds, citing wear and tear. The landlord testified that the rental unit was recently renovated, while the tenants argued that the blinds were broken upon move-in. As noted in *Residential Tenancy Policy Guideline #40* "*when applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.*

*If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement."*

As per the Policy Guideline, the useful life of blinds is 10 years. Despite the landlord's testimony that the rental unit was recently renovated, the landlord did not provide documentary evidence to support this, whether this is reflected in invoices, logs, or work orders. As noted above, and in Policy Guideline #40, the onus is on the landlord to support the age and maintenance of an item, especially when the item has exceeded its useful life. Although I am satisfied that the blinds were indeed broken, I am unable to ascertain how much of this damage can be attributed to wear and tear, and the general age of the item rather than the neglectful or intentional actions of the tenants. In light of the disputed claim and contrasting evidence, I am not satisfied that the landlord proved, on balance of probabilities, that the tenants had caused damage and losses in the amounts claimed by the landlord. The landlord's application for the broken blinds is therefore dismissed without leave to reapply.

The landlord also made a claim for damaged cabinets. As per the Policy Guideline, the useful life of cabinets is 25 years. Although the landlord had testified that the rental unit was recently renovated, the tenants provided contrasting photos to show that the rental unit had significant damage at the beginning of the tenancy. In light of the evidence before me, I am not satisfied that the landlord had supported that the damage was

attributed to the tenants rather than regular wear and tear. On this basis, I dismiss the landlord's claim for damage to the kitchen cabinets without leave to reapply.

As per this policy, the useful life of interior paint is 4 years. As noted above, the burden of proof is on the applicant to support their claim. In this case, despite the landlord's testimony that the suite was recently renovated, I find that the landlord failed to provide sufficient evidence to support when the home was last painted. I also find that the tenants' photos raise significant doubt as to the true condition of the walls upon move-in. Accordingly, I dismiss this portion of the landlord's monetary claim without leave to reapply.

The tenants dispute that they had taken the television and smart box. The tenants claim that the television was in the rental unit, and that no smart box was ever provided by the landlord. I am not satisfied that the evidence provided supports that the tenants had taken either item. These two claims are therefore dismissed without leave to reapply.

In consideration of the remaining claims, I find that the photographic and documentary evidence provided by the landlord supports that the tenants failed to leave the home in reasonably clean condition. I find that the photos depict a large amount of items left behind by the tenants, as well as the tenants' failure to properly clean the home, and as a result of the tenants' actions, they landlord was burdened with the task and cost of cleaning the home and dumping the abandoned items. Accordingly, I allow the landlord a monetary order for cleaning and dumping of the abandoned items.

As the landlord's application had merit, I allow the landlord to recover the \$100.00 filing fee.

The landlord continues to hold the tenants' security deposit of \$790.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

### **Conclusion**

I issue a Monetary Order to the landlords for the following monetary claims:

Loss of rental income (April & May 2020)	\$3,150.00
Cleaning	200.00
Removal of garbage and junk	472.50
Filing Fee	100.00
Less Security Deposit Held	-790.00
<b>Total Monetary Award</b>	<b>\$ 3,132.50</b>

The landlord is provided with this Order in the above terms and the tenants must be served with a copy of 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.

The remainder of the landlord's monetary claims are dismissed without leave to reapply.

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: July 27 2022

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Residential Tenancy Branch