



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

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## DECISION

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

### Introduction

This was a cross application hearing that dealt with tenant T.S.'s application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the landlord's application against tenant T.S. and tenant K.J. pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damages, pursuant to section 67;
- a Monetary Order for damage or compensation under the Act, pursuant to section 67;
- a Monetary Order for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlord's agent (the "agent"), tenant T.S. and tenant K.J. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties confirmed their email addresses for service of this decision and order.

### Preliminary Issue- Service

Service of the landlord's application and evidence was confirmed by the tenants. I find that the tenants were sufficiently served for the purposes of this Act in accordance with section 71 of the Act.

Service of tenant T.S.'s application for dispute resolution and evidence was confirmed by the landlord. I find that the landlord was sufficiently served for the purposes of this Act in accordance with section 71 of the Act.

### Issues to be Decided

1. Is tenant T.S. entitled to a Monetary Order for the return of the security deposit, pursuant to section 38 of the Act?
2. Is tenant T.S. entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the Act?
3. Is the landlord entitled to a Monetary Order for damages, pursuant to section 67 of the Act?
4. Is the landlord entitled to a Monetary Order for damage or compensation under the Act, pursuant to section 67 of the Act?
5. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the Act?
6. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the Act?
7. Is the landlord entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the Act?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts:

- this tenancy began on February 15, 2019,
- monthly rent in the amount of \$2,182.00 was payable on the first day of each month,
- a security deposit of \$1,075.00 and a pet damage deposit of \$1,075.00 were paid by the tenants to the landlord.

A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The agent testified that an agent for the landlord completed a move in condition inspection and report with the tenants at the start of this tenancy. Tenant T.S. testified that the landlord did not ask him to complete a move in condition inspection report and that no move in condition inspection report was completed. Tenant K.J. testified that she

does not remember completing or being asked to complete a move in condition inspection and report. Tenant K.J. testified that she has all the original documents from the start of this tenancy, but does not have a move in condition inspection report. A move in condition inspection report was not entered into evidence. The agent testified that the landlord forgot to upload it into evidence.

Both parties agree that tenant T.S. provided the landlord with his forwarding address via email on August 31, 2022 and moved out as of August 31, 2022. The agent testified that the landlord received tenant T.S.'s forwarding address on August 31, 2022. The landlord filed this application for dispute resolution on September 12, 2022.

Both parties agree that on July 9, 2022 tenant K.J. emailed the landlord and asked to be removed from the tenancy agreement as she and tenant T.S. were separating. An agent for the landlord sent tenant K.J. an email dated August 24, 2022 which was entered into evidence. It states:

Please see the attachment for the lease agreement with official initial signatures... [Tenant K.J.] has paid the July rent, which she would be removed from the lease starting at Aug 1<sup>st</sup>. [Tenant T.S.] paid the rent starting from Aug.

Tenant K.J. submitted that attached to the above email was a copy of their tenancy agreement with tenant K.J.'s name struck out and the initials of tenant K.J. and the landlord next to the change. The modified tenancy agreement was entered into evidence.

Tenant K.J. testified that she stopped being a tenant as of August 1, 2022. The landlord's agent testified that because tenant T.S. did not sign the modified tenancy agreement, the change did not take affect on August 1, 2022. Tenant T.S. testified that the K.J. was still a tenant in August of 2022.

Both parties agree that on August 2, 2022 the RCMP attended at the subject rental property and damaged the subject rental property by shooting tear gas into the windows. The landlord is seeking the following damages stemming from the above incident:

Item	Amount
Insurance deductible	\$10,000.000
Two months' loss of rent due to damage	\$4,364.00

Landlord storage fees	\$882.56
Landlord moving fee	\$756.00

The agent testified that the landlord made an insurance claim for the damage caused by the RCMP and that the landlord had to pay a \$10,000.00 insurance deductible. The agent testified that the repairs to the subject rental property took four months to complete and that the landlord is seeking an amendment to increase their loss of rent claim due to damage from two to four months. The agent testified that the landlord had a storage room in the subject rental property and that their belongings had to be moved and stored while repairs were made. The agent testified that the landlord is seeking to recover the cost of moving and storing those belongings.

The tenant entered into evidence a "Mental Health Occurrence" form completed by the RCMP regarding the August 2, 2022 incident which states in part:

#### **Medical Factors that Required BCAS Transport**

On approx. July 25 [tenant T.S.] called police for reported break and enter and police investigated the incident. Since then, [the tenant] has called the [detachment redacted] RCMP excessively and on a daily basis emphasizing his mistrust, dissatisfaction and wish to have the police put a bullet in his head. Members attended today to assess his well-being and [tenant T.S.] did not comply.

#### **Abnormal Thinking**

[Tenant T.S.] appears to be growing more paranoid then requires police assistance and then feel unsafe when police attend. [Tenant T.S.] has called up to 30 times a day to RCMP and says he just wants to waste police resources.

[Tenant T.S.] has told multiple police member in person and over the phone that he wants police to put a bullet in his head. [Tenant T.S.] also phoned MCFD 30 times today requesting the same thing.

#### **Client is Acting in a Manner Likely to Endanger the Person's Own Safety**

[Tenant T.S.] appears to have an ideation for suicide by cop. [Tenant T.S.] wants escalate situations with police so that they would need to breach his residence and get physical with him.

### **Client is Acting in a Manner Likely to Endanger the Safety of Others**

[Tenant T.S.] wants to entice police to come in and use lethal force on him. [Tenant T.S.] was informed he was apprehended today for his declining mental health and he refused to comply with police.

### **Apprehending Officer's Synopsis of Event for Physician**

[RCMP] members attended [Tenant T.S.'s] residents today to assess his well-being and apprehended [Tenant T.S.] under the MHA. [Tenant T.S.] had called the detachment/ MCFD excessive 60 times saying he wanted police to put a bullet in his head. Members attended [Tenant T.S.'s] residence and [Tenant T.S.] did not comply. Negotiators and ERT members attended and had to gas the residence. [Tenant T.S.] came out to [illegible] CEW deployed, dog bite, and 40 mm used. [Tenant T.S.] transported to [illegible].

Tenant T.S. submitted that he did not personally commit or agree to damages caused on the premises. The damages were caused by the RCMP and ERT on Aug 2, 2022. Tenant T.S. submitted that he did not invite the authorities to the property or permit them on the subject rental property. Tenant T.S. submitted that the damage was done without his consent or authorization, and he is therefore not liable for those damages.

### Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;

3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 32(3) of the *Act* states that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Based on the testimony of both parties and the Mental Health Occurrence form, I find that the damage to the subject rental property was caused by the RCMP on August 2, 2022. It is undisputed that all of the landlord's claims for damages stem from the damage caused by the RCMP. Based on tenant T.S.'s testimony and the Mental Health Occurrence form, I find that the tenant was not compliant with the RCMP and did not permit the RCMP on the property.

I find that tenant T.S. did not breach section 32(3) of the *Act* because tenant T.S. did not personally cause the damage to the subject rental property and did not permit the RCMP on the property. The tenant was therefore not required to repair the subject rental property at the end of the tenancy.

I find that the landlord has failed to prove that the tenant breached the *Act*, tenancy agreement or the Regulation. The four-point test set out in Policy Guideline #16 has therefore not been met and the landlord's claim for damages is dismissed without leave to reapply. As the landlord was not successful, I find that the landlord is not entitled to recover the \$100.00 filing fee from tenant T.S.

I note that the parties did not agree on whether or not at the time the damages occurred, tenant K.J. was joint and severally liable and still considered a tenant under the *Act*. As the landlord's application for damages has been dismissed, I find that I do not need to make a finding on tenant K.J.'s status as a tenant as the point is moot.

### Security Deposit

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants.

Section 24(2) of the *Act* states that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not complete a move in condition inspection report.

I find that the landlord has not proved, on a balance of probabilities, that a move in condition inspection report was completed as it was not entered into evidence, tenant T.S. testified that one was not completed and tenant K.J. did not recall completing one. Responsibility for completing the move in inspection report rests with the landlord. I find that the landlord breached section 24 of the *Act* by failing to complete a move in condition inspection report with the tenants.

Since I find that the landlords did not follow the requirements of the *Act* regarding the joint move-in inspection report, I find that the landlord's eligibility to claim against the security deposit and pet damage deposit for **damage** arising out of the tenancy is extinguished.

#### Security Deposit Doubling Provision

I find that the landlord was sufficiently served for the purposes of this *Act* in accordance with section 71 of the *Act*, with tenant T.S.'s forwarding address on August 31, 2022 as receipt was confirmed by the landlord on that date.

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

Section C(3) of Policy Guideline 17 states that unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for **damage** to the rental unit and the landlords' right to make such a claim has been extinguished under the *Act*.

In this case, while the landlord made an application to retain the tenants' security deposit within 15 days of receiving tenant T.S.'s forwarding address in writing, the landlord is not entitled to claim against it for **damage** to the property due to the extinguishment provisions in section 24 of the *Act*. However, the extinguishment

provisions only apply to claims for **damage**, not for loss of rental income. I find that the landlord was entitled to hold the tenants' security and pet damage deposits until the outcome of this decision as part of the landlord's claim is for loss of rental income. Tenant T.S. is therefore not entitled receive double their security and pet damage deposits.

As I have dismissed the landlord's application for dispute resolution and tenant T.S. provided the landlord with his forwarding address on August 31, 2022, I find that tenant T.S. is entitled to the return of his security and pet damage and interest accrued on those deposits. I calculate the interest accrued on the security and damage deposits, as of the date of this hearing, October 16, 2023, to be \$33.27.

As tenant T.S. was successful in this application for dispute resolution, I find that tenant T.S. is entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

I issue a Monetary Order to tenant T.S. under the following terms:

Item	Amount
Security deposit	\$1075.00
Pet damage deposit	\$1075.00
Interest on security and pet damage deposits	\$33.27
Filing Fee	\$100.00
<b>TOTAL</b>	<b>\$2,283.27</b>

Tenant T.S. is provided with this Order 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: October 25, 2023

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Residential Tenancy Branch