



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNSD, MND, MNDC, OLC, FF

### Introduction

This hearing was convened in response to an application by the Landlord and an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on August 12, 2016 for:

1. A Monetary Order for damages to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on September 14, 2016 for:

1. An Order for the return of the security deposit - Section 38;
2. A Monetary Order for compensation - Section 67;
3. An Order for the Landlord to comply with the Act - Section 62; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matters

The Tenant states that he served the Landlord with its application at the address contained in the application made by the Landlord and identified as the Landlord’s address for service of documents. The Tenant states that the application and hearing documents were sent by registered mail. The Landlord states that the documents were not received by the Landlord. The Tenant’s application and claims were reviewed and the Landlord has no objections to proceeding with hearing the Tenant’s application.

The Landlord confirmed that the Landlord's application and monetary order worksheet both set out a total amount being claimed as \$280.00. The Landlord confirmed that this amount was set out in relation to the plumbing costs to replace the kitchen sink, and bathroom tap and sink. The Landlord states that other amounts set out in the worksheet but not included in the claimed amount have been retained by the Landlord.

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure provides that claims are limited to what is stated in the application. Given that the application and monetary order worksheet both limit the total claimed amount to \$280.00 I find that the Landlord is limited to making its claim solely in relation to this amount.

#### Issue(s) to be Decided

Was the Landlord's right to claim against the security deposit extinguished?

Is the Tenant entitled to return of double the security deposit?

Did the Tenant leave damages to the unit?

Are the Parties entitled to recovery of the filing fees?

#### Background and Evidence

The tenancy started on May 20, 2015 and ended on July 24, 2016. Rent of \$1,600.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$800.00 as a security deposit and \$400.00 as a pet deposit. No move-in or move-out condition inspection was offered or report completed by the Landlord. On August 10, 2016 the Landlord returned \$1,075.00 of the combined security and pet deposit to the Tenant. The Landlord received the Tenant's forwarding address in writing on August 26, 2016.

The Tenant claims return of double the security deposit.

The Landlord states that the Tenant failed to report a leak from the kitchen and that this leak caused the kitchen sink to be damaged. The Landlord states that the Tenants failed to report a leak under the bathroom sink. The Landlord submits a photo of the bathroom sink drain area with a notation "failed to report natural wear and tear".

The Tenant states that no leak was reported because no leak occurred. The Tenant states that the Landlord also conducted inspections every second month. The Tenant states that the bathroom sink was old and worn and did not change its state during the tenancy.

### Analysis

Section 24 of the Act provides 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 make an offer for an inspection at move-in. Based on the Landlord's evidence that no move-in inspection was offered by the Landlord I find that the Landlord's right to claim against the security and pet deposit was extinguished at move-in. The Landlord was required to return the security deposit to the Tenant after the end of the tenancy.

Section 38 of the Act provides that where a landlord's right to claim against a security deposit has been extinguished the landlord may only retain amounts from a security or pet deposit that has been ordered to be retained. As the Landlord has not provided any evidence of any orders of the RTB granting the Landlord the right to retain any amount from the security deposit, I find that the Landlord could not retain any amounts from Tenant's security and pet deposit and was required to return the full amount of the security deposit to the Tenant.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord's right to claim against the security deposit was extinguished at move-in the Landlord was required to return the full security and pet deposit to the Tenant. Based on the Landlord's evidence that the Landlord only returned a portion of the combined security and pet deposit to the Tenant the I find that the Landlord must now return double the combined security and pet deposit plus zero interest of **\$2,400.00** to the Tenant. From this amount I deduct the **\$1,075.00** already returned to the Tenant leaving **\$1,325.00** outstanding. As the Tenant's application has been successful I find that the Tenant is entitled to recovery of its **\$100.00** filing fee for a total entitlement of **\$1,425.00**.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the unit undamaged except for reasonable wear and tear. Given the photos of bathroom sink I accept the Tenant's evidence that the bathroom sink was old as the damage appears to be quite old. I also consider the Landlord's notation of wear and tear to confirm that the Tenant did not cause the damage. Given the photos of the kitchen sink I also accept the Tenant's evidence that no leak occurred during the tenancy as the damage depicted by the photo also appears aged. I therefore find that the Landlord has not on a balance of probabilities substantiated that the Tenant caused the damage to the sinks. I dismiss the Landlord's claims for repairs to these items. As the Landlord's application was not successful I decline to award the Landlord recovery of the filing fee and in effect the Landlord's application is dismissed.

#### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,425.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: November 10, 2016

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Residential Tenancy Branch