



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

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

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed receipt of the landlord's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

### Preliminary Issue - Landlord Evidence

The landlord filed his application on September 15, 2016. The landlord testified that on February 24, 2017 he forwarded a 27 page evidence package via registered mail to the forwarding address provided by the tenant on the August 31, 2016 move-out condition inspection report. During the hearing, the landlord provided a Canada Post tracking number as proof of service.

The tenant testified that she has not received the 27 page evidence package and that she no longer resides at the forwarding address provided on the move-out condition inspection report.

Under the *Residential Tenancy Branch Rules of Procedure* ("RTB Rules") all evidence must be served and submitted as soon as possible. If the arbitrator determines the acceptance of the evidence would prejudice the other party or result in a breach of natural justice, the arbitrator may refuse to consider the evidence.

I find the landlord's 27 page evidence package would prejudice the tenant, if admitted. The tenant's testimony that she moved within those five months is congruent with the Canada Post tracking results which indicate the package was not received. I am satisfied the tenant did not receive the evidence package as a result of the landlord's delay in serving evidence and the tenants failure to provide her updated address. For these reasons, I have not relied on the landlord's 27 page evidence package to form any part of my decision.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit, site or property?

Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the landlord authorized to recover the filing fee for this application from the tenant?

#### Background and Evidence

As per the testimony of the parties, the tenancy began on June 1, 2015 on a fixed term until May 31, 2016 at which time the parties entered into a new fixed term tenancy effective June 1, 2016 until August 31, 2016. Rent in the amount of \$1,450.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$725.00 at the start of the tenancy. The tenant vacated the rental unit on August 31, 2016 and provided her forwarding address this same date.

During the hearing the landlord testified that he seeks \$2,699.55 in damages. Because this amount exceeds the landlord's monetary claim of \$725.00, which was stated in his application, and the landlord failed to file and serve an amendment to his application as required by *RTB Rule 4.1*, I advised the landlord that he was limited to his original claim of \$725.00.

In the details box of the application the landlord wrote;

"The tenant moved out on August 31<sup>st</sup>, 2016 but left the unit unclean and 4 doors damaged. We have to arrange to replace the doors. Final claim amount will still have to ascertain after the repairs are finalized."

[Reproduced as written]

With the knowledge that he is limited to a monetary claim of \$725.00, the landlord testified that he now seeks only the cleaning cost which includes carpet cleaning in the amount of \$336.00. The landlord also seeks to recover the filing fee paid for the application in the amount of \$100.00.

The tenant testified that she cleaned the unit to the best of her ability and shampooed the carpets prior to vacating the rental unit.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

In this case, the onus is on the landlord to prove, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Subsection 37(2) of the *Act* specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear.

In the absence of documentary evidence such as condition inspection reports, photographs and receipts to rely upon, I find the landlord has failed to meet his onus in proving the above grounds. I dismiss the landlord's monetary claim in the amount of \$336.00 for cleaning and carpet cleaning. The remainder door damage monetary claim is dismissed with leave to reapply.

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit.

Based on the parties' testimony, the landlord received the forwarding address on August 31, 2016 and filed an application to retain the deposit on September 15, 2016, which is within the fifteen days allowable under the Act. I find that although the landlord complied with the requirement under section 38 to make an application to keep the deposit, I find the landlord failed to satisfy his burden in proving his claim and consequently is not entitled to retain the security deposit. I order the landlord to return the security deposit in the amount of \$725.00 to the tenant.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for the application.

### Conclusion

The landlord's application for a monetary order for cleaning including carpet cleaning is dismissed without leave to reapply.

The landlord's application for a monetary order for door damage is dismissed with leave to reapply.

I issue a monetary order in the amount of \$725.00 to the tenant for the security deposit.

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: March 28, 2017

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Residential Tenancy Branch