



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SHERLOCK ENTERPRISES COMPANY LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, 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;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the landlord's submitted documentary evidence. The tenant provided no documentary evidence. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

At the outset discussions between the parties clarified that the tenant named as A.R.S. was filed in error and the proper tenant's name is S.A.R. As such, the tenant's name shall be amended as discussed.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage and recovery of the filing fee?  
Is the landlord entitled to retain all or part of the security deposit?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord seeks a monetary claim of \$304.50 for the cost of a blown fuse for the elevator. The landlord claims that the tenant's children were seen playing with the elevator buttons on the elevator, pressing the buttons on both the exterior lobby and inside the elevator. The landlord claims that this was recorded on video. The landlord has provided:

- a copy of an incident report in which the elevator blown fuse was documented dated June 7, 2016
- a copy of the afterhours call out invoice for elevator repair dated May 14, 2016.

The tenant provided testimony through the assistance of her translator, M.A. who stated that the breakdown of the elevator was due to wear and tear. The tenant provided testimony stating that her children were small, ages 5 and 7 who were playing as she was closing the rental unit door. The tenant provided no further details of how the blown fuse was due to wear and tear.

The landlord provided undisputed affirmed evidence that although the elevator was approximately 46 years of age, it underwent a complete service/refurbishment in 2016 essentially making it a new elevator.

### 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 order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I find based upon the evidence of both parties that the landlord has provided sufficient evidence that the tenant's children caused a blown fuse with the elevator controls by

pressing them. The landlord has provided undisputed affirmed evidence that the tenant's children were caught on video playing with the elevator controls inside and outside of the elevator on May 14, 2017. The video shows that as this occurred the elevator failed causing it to be stuck on the third floor. The landlord has submitted a copy of the service invoice dated May 14, 2017 for \$304.50 which states that the fuse was blown and that upon replacement the elevator was fully functioning. I also find that the tenant's claim of wear and tear is not believable on a balance of probabilities as the landlord provided undisputed affirmed evidence that the entire elevator was re-furbished in 2016 essentially making it a new elevator. As such, I find that the landlord has established a claim for \$304.50.

The landlord having been successful is entitled to recovery of the \$100.00 filing fee.

### Conclusion

The landlord is granted a monetary order for \$404.50.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the 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: March 09, 2017

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Residential Tenancy Branch