



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, MNSD, FF

### Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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 their 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 that the landlord served the tenant with the notice of hearing package in person on September 17, 2017. As both parties have attended and have confirmed receipt of the notice of hearing package, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

The landlord claims that she served the 1 page of documentary evidence via email to the tenant. The tenant disputed this stating that no evidence has been provided to her for the hearing. The landlord was unable to provide sufficient evidence to satisfy me of service. The tenant claims that she served the landlord with the 6 pages of documentary evidence via regular post mail. The landlord disputed that no evidence has been provided to her for the hearing. The tenant was unable to provide sufficient evidence to satisfy me of service. As such, I find that both parties have failed to provide sufficient evidence of service and find that both documentary evidence submissions are excluded as neither party can provide any evidence to support their claim of service. The hearing shall proceed on the direct testimony of both parties.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for money owed or compensation for damage or loss and recovery of the filing fee?

Are the landlords 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.

Both parties agreed that the tenancy began approximately 12 years prior and that the tenant had paid a \$550.00 security deposit sometime in July of 2005.

The landlords seek a monetary claim of \$1,127.28 which consists of:

\$827.88	Rental of Garbage bin
\$300.00	Landlords' labour for 15 hours of cleaning at \$20/hr.

The landlords provided affirmed testimony that the tenant vacated the rental unit leaving a lot of garbage and other items inside and outside of the house which required the rental of a garbage bin and 15 hours of cleaning by the landlords. The landlord stated that the tenant left a trampoline, 2 mattresses, 2 sofas, a wooden boat and miscellaneous garbage/toys/pots. The landlord claims that a person was hired who performed 7 hours of cleaning on the first day and 8 hours of cleaning on the second day.

The tenant confirmed that she did leave a trampoline, 2 sofas and miscellaneous garbage, but disputes that a wooden boat and 2 mattresses were left by her. The tenant confirmed that she was aware of the landlord hiring a person to clean. The tenant confirmed and accepted the landlord's claim for cleaning of \$300.00.

### 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.

I find on a balance of probabilities that the landlord has failed to establish a claim for the rental of the \$827.28 garbage bin for removal of various items. Although the tenant has confirmed that she left a trampoline, 2 sofas and miscellaneous garbage the tenant has disputed the remaining portions of the garbage left. The landlord has failed to provide sufficient evidence to satisfy me of ownership of the wooden boat and proof that the tenant also left 2 mattresses. As such, I find that the landlord is entitled to an arbitrary nominal award of \$200.00.

The landlord has been successful in establishing a monetary claim of \$300.00 for cleaning as the tenant has confirmed and accepted that cleaning was required that was left by the tenant. As such, the landlord has been successful in this part of the claim.

The landlord has established a monetary claim of \$500.00. Having been successful the landlord is also entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$550.00 security deposit and the \$19.48 in accrued interest since July of 2005 and grant the landlord a monetary order for the difference of \$80.52.

### Conclusion

The landlord is granted a monetary order for \$80.52.

The landlord may retain the \$569.48 security deposit and accrued interest in offsetting the \$650.00 established claim.

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 14, 2017

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Residential Tenancy Branch