



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenants: MNSD OLC FF  
For the landlord: MND MNSD FF

### Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “*Act*”). The tenants applied for a monetary order for the return of their security deposit, for an order directing the landlord to comply with the *Act*, and to recover the cost of the filing fee. The landlord applied for a monetary order for damage to the unit, site or property, to retain the tenants’ security deposit, and to recover the cost of the filing fee.

The landlord and tenants attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither party raised any concerns regarding the service of documentary evidence. Both parties confirmed that they were aware of the Application for Dispute Resolution (the “Application”) as served upon them by the other party.

### Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants’ security deposit under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on December 1, 2014 and reverted to month to month after March 31, 2016. The parties agreed that the tenancy ended on September 29, 2016 when the tenants vacated the rental unit. The tenants paid a security deposit of \$600.00 and a pet damage deposit of \$600.00 at the start of the tenancy which has accrued no interest to date. The parties confirmed that the landlord has already returned the tenants' pet damage deposit in the amount of \$600.00. The landlord continues to hold the tenants' security deposit of \$600.00.

### Landlord's claim

The landlord has claimed a total amount of \$571.01 as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Lino flooring replacement	\$213.81
2. Toilet reinstall after flooring replaced	\$144.97
3. Carpet cleaning	\$63.00
4. Photo copies	\$6.68
5. Registered mail costs	\$12.55
6. Plumbing inspection	\$30.00
7. Filing fee	\$100.00
<b>TOTAL</b>	<b>\$571.01</b>

Regarding item 1, the landlord has claimed \$213.81 for the cost to replace damage linoleum flooring in the bathroom. The landlord testified that the linoleum flooring was six months old at the start of the tenancy but that 50% of the flooring was stained by the tenants during the tenancy. The landlord referred to several colour photos submitted in evidence. The condition inspection report supports that the linoleum flooring was stained and was signed by tenant R.H. confirming that she agreed with the condition of the flooring at the end of the tenancy which also was indicated as "new lino" at the start of the tenancy. The landlord also submitted in evidence a quote to repair the linoleum flooring in the amount of \$213.81.

Regarding item 2, the landlord has claimed \$144.97 as the cost to reinstall the toilet after the linoleum flooring was replaced. The landlord submitted in evidence a receipt in the amount of \$144.97 in support of this portion of their monetary claim.

Regarding item 3, the parties reached a mutually settled agreement during the hearing regarding this portion of the landlord's monetary claim. The parties agreed that the tenants owe the landlord \$60.0 for item 3. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the nature of this full and final settlement of these matters.

Regarding items 4 and 5, these items were dismissed during the hearing as there is no remedy under the *Act* to recover photo copying fees and registered mail costs. As a result, items 4 and 5 were dismissed without leave to reapply.

Regarding item 6, the landlord is seeking \$30.00 for the cost of a plumbing inspection but was advised during the hearing that this portion of her claim was dismissed without leave to reapply as the landlord provided insufficient evidence in support of this portion of her claim and failed to meet the burden of proof which will be described further below.

Regarding item 7, the filing fee will be discussed later in this decision.

#### *Tenant's claim*

Regarding the tenants' claim, the tenants have claimed for the return of their security deposit in the amount of \$600.00. During the hearing the parties agreed that on October 11, 2017 the landlord was served by e-mail with the tenants' written forwarding address. The landlord applied to claim against the tenants' security deposit on October 25, 2017.

The parties also agreed during the hearing that the parties had agreed to a carpet cleaning deduction of \$60.00 at the end of the tenancy which was confirmed via a copy of an e-mail submitted in evidence.

#### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on each applicant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the respondent. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Landlord's claim

**Item 1** - The landlord has claimed \$213.81 for the cost to replace damage linoleum flooring in the bathroom. After considering the testimony and photo evidence and having considered the condition inspection report, I am satisfied that the tenants damaged the linoleum flooring of the bathroom during the tenancy. I also find the amount claimed to be reasonable and is supported by a quote submitted by the landlord. Therefore, I find the tenants have breached section 37 of the *Act* which states:

**Leaving the rental unit at the end of a tenancy**

**37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) **When a tenant vacates a rental unit, the tenant must**

(a) **leave the rental unit reasonably clean, and undamaged** except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[My emphasis added]

I find the damage was not reasonable wear and tear and that due to the staining, it requires replacement. Therefore, I find the landlord has met the burden of proof and I grant the landlord **\$213.81** as claimed for this portion of the landlord's monetary claim.

**Item 2-** Consistent with my finding in item 1 above, I find that the removal and reinstallation of the bathroom toilet is necessary when replacing damaged linoleum flooring. Therefore, having considered the receipt submitted in evidence, I find the landlord has met the burden of proof and I grant the landlord **\$144.97** as claimed for this portion of the landlord's monetary claim.

**Item 3 –** As described above, the parties reached a mutually settled agreement that the tenants owe the landlord **\$60.00** for carpet cleaning. This settlement agreement was reached in accordance with section 63 of the *Residential Tenancy Act*. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the nature of this full and final settlement of these matters.

**Items 4 and 5 –** These items were dismissed without leave to reapply during the hearing as there is no remedy under the *Act* to recover the cost of photocopying and registered mail costs.

**Item 6 –** As noted above, this item was dismissed without leave to reapply as the landlord provided insufficient evidence and has failed to meet the burden of proof.

**Item 7 -** As the landlord's claim had merit, I grant the landlord the recovery of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

Given the above, I find the landlord has established a total monetary claim of **\$518.78** comprised of \$213.81 for item 1, \$144.97 for item 2, \$60.00 for item 3, and \$100.00 for the recovery of the cost of the filing fee.

Tenants' claim

Section 38 of the *Act* states as follows:

**Return of security deposit and pet damage deposit**

**38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of**

**(a) the date the tenancy ends, and**

**(b) the date the landlord receives the tenant's forwarding address in writing,**

**the landlord must do one of the following:**

**(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;**

**(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.**

[My emphasis added]

Based on the above, I find the landlord complied with section 38 by making an application to claim against the tenants' security deposit within 15 days of October 11, 2017 which was the date the parties agreed to during the hearing that the landlord received the tenants' written forwarding address by email. The landlord filed her Application on October 25, 2017. As a result, I dismiss the tenants' Application in full as the landlord did not breach section 38 of the *Act* and that the tenants have failed to prove part one of the test for damages or loss under the *Act* as a result.

As the tenants' claim did not have merit, I dismiss the tenants' request for the recovery of the cost of the filing fee.

Conclusion

The landlord's application was partially successful.

The tenant's application has no merit and is unsuccessful.

The landlord has established a total monetary claim of \$518.78 as described above. I authorize the landlord to retain \$518.78 of the tenants' \$600.00 security deposit which

has accrued \$0.00 in interest pursuant to section 72 of the *Act*. The landlord is ordered to immediately return the tenants' remaining security deposit balance of \$81.22. Should the landlord fail to comply with my order, the tenants are granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the landlord to the tenants in the amount of \$81.22. Should the tenants require enforcement of the monetary order, the tenants must first serve the landlord with the monetary order and the monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: April 24, 2017

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Residential Tenancy Branch