



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental unit and 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 tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants' applied for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover their filing fee for this application from the landlord 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 of the other party. I accept the undisputed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

The landlord provided affirmed testimony that the submitted documentary evidence was served to each of the tenants via Canada Post Regular Mail. Both tenants disputed receiving any documentary evidence from the landlords. The landlord also claimed that a copy of the submitted documentary evidence (photographs and a cost breakdown) was provided to each of the tenants via email as attachments. The tenant, R.B. after

much discussion confirmed receipt of this email. The tenant, S.G. stated that no such email was received.

The hearing was adjourned due to insufficient time. On January 18, 2018 the hearing was reconvened with the landlord's agent attending via conference call and providing undisputed affirmed testimony. The tenants did not attend. The hearing proceeded in the absence of the tenants. After 20 minutes past the start of the scheduled hearing time, the tenants' application was dismissed without leave to reapply.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for money owed or compensation for damage or loss 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 both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on September 1, 2016 on a fixed term tenancy ending on May 1, 2017 as shown by the submitted copy of the signed tenancy agreement dated August 7, 2016. The monthly rent was \$1,700.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$850.00 was paid.

The landlord seeks a filed monetary claim which limits any claims to \$1,207.41 which consists of:

\$640.00	Cleaning
\$93.03	Re-Key lock
\$35.83	Replace Broken Refrigerator handle
\$30.44	Rental Machine, Shampoo Sofa
\$11.82	Blind Wand (control rod) replacement
\$73.66	Grout (materials)
\$150.00	labour, grout installation
\$225.00	Late Fees (5X \$45/each)
\$30.83	Replacement of Broken Lamp
\$5.72	Mailing Fee

During the hearing both parties were advised that the landlord's monetary claim for late fee(s) of \$225.00 (5X \$45.00/each) was contrary to the Act and deemed unconscionable and unenforceable. This portion of the landlord's claim was dismissed. Both parties were also advised that the landlord's monetary claim for a \$5.72 mailing fee was dismissed under section 72 of the Act in that litigation cost(s) were not recoverable.

Both parties confirmed that the tenants vacated the rental premises on April 30, 2017 pre-maturely breaching the fixed term tenancy ending on May 1, 2017. Both parties confirmed that a condition inspection report for the move-in was completed by both parties on September 1, 2016, but that a move-out inspection report was not.

The landlord claims that the tenants vacated the rental premises leaving it dirty requiring cleaning for a cost of \$640.00. The tenants disputed this claim stating that the rental was left clean.

The landlord claims that the tenants failed to return 1 key to the rental premises and was forced to re-key the locks at a cost of \$93.03. The tenants claimed that the key was mailed to the landlord after the end of tenancy.

The landlord claims that the tenants vacated the rental premises leaving it with a damaged refrigerator door handle which had to be replaced at a cost of \$35.83. The tenants claimed that the refrigerator door handle was loose during the tenancy and that the landlord was notified. The landlord disputed this claim stating that at no time was the landlord notified.

The landlord claims that the tenants vacated the rental premises leaving a sofa dirty and stained requiring the rental of a carpet shampoo machine for a cost of \$30.44. The tenants dispute this claim.

The landlord provided undisputed affirmed testimony of claims that the tenant vacated the rental unit leaving a broken blind wand which required a replacement cost of \$11.82; tenants damaged the grout leaving un-cleanable requiring replacement for a cost of \$73.66 (Grout) and \$150.00 (labour for grout removal/replacement); replacement of a damaged floor lamp for \$30.83 (used replacement of lamp).

In support of the landlord's monetary claim, the landlord has provided digital evidence in the form of:

Copies of signed tenancy agreement, condition inspection report for move-in, addendum to the tenancy agreement, emails.

Copies of Email, E-Transfers.

Receipts/Invoices

Copies of text messages between the parties.

Copies of Photographs re: condition of rental premises

### 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, I accept the undisputed documentary evidence (receipts/invoices and photographs) of the landlord over those claims of verbal dispute by the tenants. The landlord has provided sufficient evidence that the tenants vacated the rental premises leaving it dirty requiring cleaning; leaving damaged furniture and fixtures as shown in the submitted photographs. The landlord's claims are also support by the condition inspection report for the move-in completed by both parties as a comparison of the condition of the rental premises.

The landlord has established a monetary claim for \$1,065.61 which consists of:

\$640.00	Cleaning
\$93.03	Re-Key lock
\$35.83	Replace Broken Refrigerator handle
\$30.44	Rental Machine, Shampoo Sofa
\$11.82	Blind Wand (control rod) replacement
\$73.66	Grout (materials)
\$150.00	labour, grout installation
\$30.83	Replacement of Broken Lamp

The landlord having been successful is entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$850.00 security deposit in offsetting this claim and grant the landlord a monetary order for the balance due of \$315.61.

Conclusion

The tenants' application is dismissed without leave to reapply.  
The landlord is granted a monetary order for \$315.61.

This order must be served upon the tenants. Should the tenants 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: January 18, 2018

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Residential Tenancy Branch