



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COLDWELL BANKER PRESTIGE REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

This teleconference hearing was scheduled in response to an Application under the *Residential Tenancy Act* (the *Act*) for monetary compensation for damage or loss against the security deposit.

The Landlord was represented by two agents (the “Landlord”), while no one called in for the Tenant during the hearing, which lasted approximately 22 minutes. As the Tenant did not call into the hearing, service of the Notice of Dispute Resolution Proceeding (the “Notice of Hearing”) was addressed.

The Landlord provided affirmed testimony that the Notice of Hearing, along with a copy of their evidentiary material, was sent to the Tenant by registered mail. Although they were not able to locate the registered mail receipt during the hearing to find the exact date, both agents for the Landlord testified that the package was sent in October 2017, as soon as the Notice of Hearing was received from the Residential Tenancy Branch. I accept the Landlord’s undisputed testimony that the Notice of Hearing was sent to the Tenant in October of 2017.

### Issue(s) to be Decided

Is the Landlord entitled to compensation for damage or loss under the *Residential Tenancy Act*?

### Background and Evidence

The Landlord is seeking monetary compensation for the loss they claim they incurred when the Tenant moved out with the furniture from a fully furnished rental unit.

The Tenancy began on October 1, 2014 and continued until the Tenant moved out on October 1, 2017. Monthly rent in the amount of \$1,800.00 was due on the first day of the month. A security deposit of \$900.00 was paid at the start of the tenancy and the Landlord testified that they are still in possession of the full security deposit.

The Landlord submitted the Tenancy Agreement as evidence. The Tenancy Agreement states that the rental unit does not include furniture. However, the Landlord testified that a new agent with their company had completed the Tenancy Agreement at the start of the tenancy and filled out the incorrect form, instead of the agreement they use for furnished units.

As evidence of the rental unit being furnished, the Landlord submitted an email exchange with the Tenant when she first moved in, in which the Tenant wrote about the unit being fully furnished and wrote specifically about the bed and the couch. The Landlord also submitted the online advertisement for the rental unit which showed rent for the unfurnished unit at \$1,600.00 and furnished at \$1,850.00 per month. The Landlord testified that an amount of \$1,800.00 for the fully furnished unit was agreed upon between Landlord and Tenant at the outset of the tenancy.

The Landlord also submitted photos of the furnished rental unit that were used to advertise the unit for rent in 2014. Although unsure of the exact date, the Landlord testified that these photos were taken in 2014, prior to the Tenant moving in.

A copy of the Condition Inspection Report was submitted which the Landlord and Tenant signed for move-in on September 26, 2014 and move-out on October 1, 2017. The Tenant's forwarding address was provided on the Condition Inspection Report upon move-out.

The Landlord testified that the Tenant did not agree to any deductions for damage or loss from her security deposit, as evidenced by the Condition Inspection Report that did not include written permission from the Tenant to deduct from the security deposit. The Condition Inspection Report contains a written statement from the Landlord that the rental unit was empty upon move out.

### Analysis

Section 38 of the *Act* states that within 15 days of receiving a tenant's forwarding address, a Landlord must either repay the security deposit or make an application for Dispute Resolution that claims against the security deposit. As evidenced by the

Condition Inspection Report which was signed by both parties, the Tenant provided her forwarding address in writing on October 1, 2017. The Landlord applied to the Residential Tenancy Branch for Dispute Resolution on October 10, 2018, which is within the 15 days allowable under the *Act*. As such, I find that the Landlord had the right to claim against the security deposit.

In further consideration of the Landlord's claim against the security deposit, I find that the requirements of Section 35 of the *Act* were met with the completion of move-in and move-out Condition Inspection Reports that both the Tenant and Landlord participated in and signed.

Section 67 of the *Act* states that compensation for damage or loss due to non-compliance with the *Act*, the regulation or the tenancy agreement may be awarded by the director. In accordance with this section of the *Act*, I consider the evidence and testimony in front of me to determine if there was non-compliance by the Tenant and if damage or loss occurred as a result.

Based on the photos, the email exchange between the Tenant and Landlord and the online advertisement, I accept the Landlord's undisputed testimony and evidence that the rental unit was furnished at the time the Tenant moved in. I also accept the evidence before me that the furniture was no longer in the rental unit when the Tenant moved out on October 1, 2017, based on the undisputed testimony of the Landlord and the statement on the Condition Inspection Report. As such, I determine that a loss has occurred due to the furniture that is no longer in the Landlord's possession.

I refer to Section 37 of the *Act*:

- 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.

In consideration of the above, I determine that damage occurred to the rental unit as it was not left in the same manner as it was when the Tenant moved in. I accept the

Landlord's testimony and evidence that damage and loss occurred, given that the furniture was no longer in the rental unit when the Tenant returned possession to the Landlord.

In accordance with Section 67 of the *Act*, I believe that the Landlord is entitled to compensation for the damage and loss related to the loss of the furniture from the rental unit. In determination of the value of the missing furniture, I look to the Landlord's monetary worksheet that values the furniture at \$900.00. The furniture items are listed and valued as follows:

- |                          |          |
|--------------------------|----------|
| • Couch                  | \$300.00 |
| • Bed mattress and frame | \$300.00 |
| • 2 side tables          | \$100.00 |
| • 2 coffee tables        | \$100.00 |
| • 2 chairs               | \$100.00 |

The Landlord testified that the furniture was not newly purchased in 2014, but they are not sure exactly when it was bought or of the exact value. The cost estimates for the furniture was estimated by the Landlord based on other furniture of similar condition and style. As the testimony on the value of the furniture was undisputed, I accept the estimated value of the items and find the estimates to be reasonable based on the photos of the furniture and the amount of furniture items.

Given the above, I find that the Tenant is responsible for the cost of the furniture for an amount totalling \$900.00. As the Landlord is in possession of the Tenant's \$900.00 security deposit, I order the Landlord to retain this amount in full satisfaction of the money owed for damage or loss.

As the Landlord was successful in their claim, they are entitled to the recovery of the filing fee for this application. As such, I award a Monetary Order to the Landlord in the amount of \$100.00.

### Conclusion

I **Order** that the Landlord retain the security deposit in the amount of **\$900.00** in full satisfaction of the monetary amount awarded for damage and/or loss.

Pursuant to Section 72 of the *Act*, I grant the landlord a **Monetary Order** in the amount of \$100.00 for the recovery of the filing fee for this application. The Landlord is provided

with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this 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: May 25, 2018

---

Residential Tenancy Branch