



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DOWNTOWN SUITES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

On May 14, 2018, the Landlord applied for a dispute resolution proceeding seeking a Monetary Order for compensation for a damaged tile in the bathroom and to apply the security deposit towards this debt pursuant to section 67 of the *Act*. The Landlord is also seeking to recover the filing fee pursuant to section 72 of the *Act*.

L.T. and B.S. attended the hearing as agents for the Landlord and F.E. and N.H. attended the hearing as the Tenants. All parties provided a solemn affirmation.

L.T. confirmed that a Notice of Hearing package was served to each Tenant by registered mail on May 25, 2018 and F.E. confirmed receipt of the packages. As such, and in accordance with sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served with the Notice of Hearing packages.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Landlord entitled to a monetary award for compensation for damage to the rental unit pursuant to section 67 of the *Act*?
- Is the Landlord entitled to apply the security deposit towards this debt pursuant to section 72 of the *Act*?
- Is the Landlord entitled to recover the filing fee pursuant to section 72 of the *Act*?

### Background and Evidence

L.T. stated that the tenancy started on August 1, 2016 as a fixed term tenancy ending on July 31, 2017 and that the tenancy continued as a month to month tenancy thereafter. Rent was established at \$1,750.00 per month, due on the first day of each month. A security deposit of \$875.00 was paid. F.E. confirmed these details.

L.T. claimed for \$185.25 as the cost to replace a damaged tile in the bathroom. L.T. stated that on the move-in inspection report, there was no note of this damaged tile. However, on the move-out inspection report, it was noted that there was a soap holder on the wall where this particular tile was and that the soap holder was not there at the end of tenancy. L.T. submitted that the missing soap holder was screwed into the bathroom wall and was likely somehow damaged or removed during the tenancy, causing the bathroom tile to be damaged. L.T. advised that the property manager conducting the move-out inspection report asked the Tenants for written permission to deduct the cost of repairs from the security deposit; however, the Tenants did not agree. L.T. submitted an invoice with the cost of repairing the tile only, and did not have a new soap holder reinstalled. L.T. referenced pictures submitted into evidence illustrating the holes in the tile that was replaced.

F.E. submitted that this is a false allegation and they did not break the tile. He stated that if the Landlord is alleging that the Tenants broke the soap holder, the Landlord should have replaced the soap holder and not the tile. He advised that the inspection reports were well written and detailed but not entirely accurate as he pointed out some deficiencies later. He stated that there was no soap holder on the wall at the time of move in. The Tenant referenced pictures submitted into evidence to support his argument that the rental unit did not come with a soap holder. He submitted that if they had broken off the soap holder, it would have caused more damage than to one tile only.

### Analysis

When establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the

amount of or value of the damage or loss”, and that “the value of the damage or loss is established by the evidence provided.”

The undisputed evidence before me is that all parties agreed in the move-inspection report that there was not a soap holder that was missing in the bathroom. Furthermore, the move-out inspection report indicates that the damage was noted; however, the Tenants did not sign the report agreeing or disagreeing to the damage.

Based on a balance of probabilities, I do not find it likely that a missing soap holder was overlooked on the move-in inspection report and that the holes in the tile where it was installed were simply unnoticed and not observed during the move-in inspection with the Landlord. I find it more likely than not that this soap holder was included in the tenancy and either broken or removed during the tenancy, which subsequently damaged the tile in question. I note that the Landlord is not seeking a replacement of the soap holder, but simply seeking compensation to replace the broken tile. I find that the Landlord has corroborated their claim and should be awarded a Monetary Order for repair of the broken tile in the amount of \$185.25.

As the Landlord was successful in her claim, I find that they are entitled to recover \$100.00 filing fee paid for this application.

Under the offsetting provisions of section 72 of the *Act*, I allow the Landlord to retain a portion of the security deposit in satisfaction of the amount awarded.

Pursuant to sections 67 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Landlord to the Tenant**

Security deposit	\$875.00
Tile repair	-\$185.25
Recovery of filing fee	-\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$589.75</b>

#### Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$589.75** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should

the Landlord 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: July 27, 2018

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Residential Tenancy Branch