



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LORD NELSON PLACE TONEGUZZO  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, FFL

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

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's representatives attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord's representatives and I were the only ones who had called into this teleconference.

The landlord's building manager gave sworn testimony that copies of the landlord's dispute resolution package were sent to each of the tenants individually at the mailing address they provided to the landlord at the end of their tenancy by registered mail on January 16, 2018. The building manager provided the Canada Post Tracking Numbers to confirm these registered mailings. Based on this undisputed sworn testimony and the copies of the tracking numbers entered into written evidence by the landlord, I find that the tenants were deemed served with the landlord's dispute resolution hearing packages in accordance with sections 89 and 90 of the *Act* on January 21, 2018, the fifth day after their registered mailing. As I accept that the tenants were also sent

copies of the landlord's written evidence by registered mail on April 20, 2018, as declared by the landlord's building manager at the hearing, I find that the tenants were deemed served with this evidence in accordance with sections 88 and 90 of the *Act* on April 25, 2018.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy began on December 1, 2016. Monthly rent was set at \$1,280.00, payable in advance on the first of each month. The tenants paid a \$640.00 security deposit at the beginning of this tenancy on November 23, 2016, plus \$100.00 in key deposits to obtain the keys to access this rental unit.

The landlord entered into written evidence a copy of the tenants' November 29, 2017 written notice to end this tenancy on December 31, 2017, the date they ended their tenancy and vacated the rental unit.

The landlord's representatives testified that the parties conducted a joint move-in condition inspection on December 1, 2016 and a joint move-out condition inspection on December 31, 2017, when this tenancy ended. The landlord entered into written evidence a copy of that inspection report. At the end of the tenancy, the landlord returned \$61.64 to the tenants from their security deposit and their \$100.00 key deposit. The landlords retained \$578.36 from the security deposit and applied for dispute resolution within 15 days of the end of this tenancy on January 11, 2018 to retain that amount for damage and losses that had arisen during the course of this tenancy.

In the written evidence presented by the landlord, the landlord outlined the following details to document the amounts claimed in their application:

Item	Amount
Carpet Cleaning	\$85.00

Drapes - Washing and Pressing	95.00
Painting 2 doors and 2 door jambs	200.00
Illegal Parking	148.36
Move-Out Surcharge	50.00
<b>Total of Above Items</b>	<b>\$578.36</b>

The landlord also entered into written evidence receipts to confirm each of the above items and provisions in their agreement with the tenants outlining the tenants' responsibilities for these claimed items.

### 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, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

In this case, I find that the landlord has returned \$61.64 from the tenants' security deposit and applied to the Residential Tenancy Branch for authorization to retain the remainder of that deposit within 15 days of the end of this tenancy, on January 11, 2018.

Based on the landlord's undisputed written and photographic evidence and the landlord's undisputed sworn testimony at this hearing, I find that the landlord is entitled to a monetary award of \$578.36 for the damage and losses claimed, to be retained from the portion of the tenants' security deposit the landlord continues to hold.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants.

### Conclusion

I issue a monetary award in the landlord's favour under the following terms, which allows the landlord to recover damage and losses arising out of this tenancy and the filing fee from the tenants, and to retain the remaining portion of the security deposit still held by the landlord:

<b>Item</b>	<b>Amount</b>
Carpet Cleaning	\$85.00
Drapes - Washing and Pressing	95.00
Painting 2 doors and 2 door jambs	200.00
Illegal Parking	148.36
Move-Out Surcharge	50.00
Less Retained Portion of Security Deposit (\$640.00 - \$61.64 = \$578.36)	-578.36
Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$100.00</b>

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: August 14, 2018

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Residential Tenancy Branch