



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** FFL MNDL-S

### **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 monetary loss or money owed under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord was represented in the hearing by his agent, SAS ("landlord"). Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants confirmed receipt of the landlord's application and evidence, which was served to the tenants by Registered Mail on January 15, 2018. In accordance with sections 88, 89, and 90 of the Act, I find that the tenants were deemed served with the landlord's application and evidence on January 20, 2018, 5 days after mailing. The tenants did not submit any written evidence for the hearing.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for losses?

Is the landlord entitled to recover the filing fee for this application from the tenants?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are

reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed term tenancy began on June 1, 2017. Monthly rent was set at \$1,600.00, payable on the first of every month. The landlord collected a security deposit of \$800.00, and still holds that deposit. The tenants moved out on December 31, 2017.

Both parties confirmed in the hearing that both a move-in and move-out inspection was completed for this tenancy, and reports were provided to the tenants. The landlord admitted that the move-out inspection was completed with the landlord's agent, who did perform their duties to a satisfactory standard. The landlord testified that the agent failed to properly communicate with the tenants the level of damage left by the tenants.

The landlord is seeking a Monetary Order in the amount of \$5,575.50 for damages as outlined in the table below and in the landlord's Application:

<b>Item</b>	<b>Amount</b>
Demolition (mouldings, flooring, bathroom)	\$600.00
Flooring	2,840.00
Re-Installation and Painting of mouldings	360.00
Countertops	320.00
Cabinet	480.00
Plumbing	450.00
Installation of baseboard heater, door, closet door	60.00
Painting & Repairs	200.00
Taxes	265.50
<b>Total Monetary Order Requested</b>	<b>\$5,575.50</b>

The landlord testified that the home was built in 2008, and purchased in 2015. There was 1 previous tenant before the tenants moved in on June 1, 2017. At the time of the hearing, the landlord's agent confirmed that the repairs as listed in the estimate submitted by the landlord had been completed with the exception of the flooring.

The home is now occupied by the landlord. The tenants are disputing the entire monetary claim with the exception of damage to the sink. The tenants dispute the amount of the repairs, as they feel the \$400.00 would be fair compensation, and not the \$450.00 claimed by the landlord.

The landlord testified that the cabinets were approximately 10 years old, and damaged by the tenants. The tenants dispute this claim, stating that the landlord failed to maintain the rental unit, including seals that prevented water from damaging the cabinets and surrounding area. The

tenants testified that they had reported this to the landlord, but was told that this was “normal” and no repairs were required. The tenants testified that they had lived in the rental unit, and that the move-out inspection was completed with the landlord’s agent, which does not support the landlord’s monetary claim for damages. The tenants testified that there was no mention of damage to the flooring, especially the need to remove and replace all the flooring.

### **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 or 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 a balance of probabilities, that the tenants had caused damage in the amounts claimed by the landlord.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear. Both parties confirmed that both move-in and move-out inspections were completed. Sections 23 and 35 of the *Act* require the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that “the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished”, as noted in sections 24(2) and 36(2) of the *Act*. Although the landlord did comply with the *Act* by completing and providing the tenants with both move-in and move-out reports, the landlord disputes the accuracy of the move-out inspection report as the landlord believes that their agent did not provide an accurate representation of the rental unit.

I have reviewed the landlord’s monetary claim for damages, and have taken in consideration of the evidential materials submitted by the landlord, as well as the sworn testimony of both parties. The landlord submitted a monetary claim that conflicted with the landlord’s own move-out inspection report. The report was completed at the end of the tenancy with the tenants, by the landlord’s agent, and no damages were noted with the exception of minor issues such as a scratch on the cabinet door. In the section “damage to the rental unit or residential property for which the tenant is responsible”, the section is left blank. The report reflects a very different assessment than the one that the landlord provided for this hearing and their application.

Although the tenants are required to leave the rental unit in reasonably clean and undamaged condition, the purpose of the move-in and move-out inspection reports is to provide both parties with the opportunity to clearly identify and address damage that took place during the specific tenancy.

Although the landlord complied with sections 23 and 35 of the *Act*, I find the incongruence between the landlord's testimony and evidence and the condition as reflected in the condition inspection report brings into disrepute the validity of the landlord's monetary claim and credibility of the landlord's description of the actual condition of the rental unit.

Section 21 of Residential Tenancy Regulation states the following about the evidentiary weight of a condition inspection report:

**Evidentiary weight of a condition inspection report**

**21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In light of the conflicting evidence provided, and taking in consideration that the party claiming the loss bears the burden of proof, I find that I have no way of ascertaining the actual extent of the damage, if any, that occurred during this tenancy beyond what was admitted to by the tenants. On this basis, I dismiss the landlord's monetary claim for damages without leave to reapply, with the exception of \$450.00 for the kitchen sink.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was only partially successful in their application, I find that the landlord is entitled to recover half of the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenants' security deposit of \$800.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$500.00 of the tenants' security deposit in satisfaction of the monetary claim.

**Conclusion**

I find that the landlord is entitled to recover \$450.00 for the damage to the sink, and half of the filing fee.

The remaining portion of the landlord's application is dismissed without leave to reapply.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$500.00 of the tenants' security deposit in satisfaction of the monetary claim.

The tenants are provided with a Monetary Order in the amount of \$300.00 for the return of their security deposit, and the landlord(s) must be served with **this Order** as soon as possible.

Should the landlord(s) 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: September 25, 2018

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Residential Tenancy Branch