



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for damage to the rental unit 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 participate in the conference call hearing, which lasted approximately 15 minutes. The landlords attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlords testified that on February 16, 2018 they forwarded the landlords' application for dispute resolution hearing package via registered mail to tenant BN. As part of their oral testimony, the landlords provided a Canada Post tracking number as proof of service. Based on the testimony of the landlords and in accordance with sections 89 and 90 of the *Act*, I find that tenant BN has been deemed served with the application and supporting documents on February 21, 2018, the fifth day after their registered mailing.

### Preliminary Issue – Naming of the Parties

On February 13, 2018, the landlords applied for dispute resolution naming two tenants as respondents. During the hearing the landlords testified that they did not serve the application or supporting evidence to tenant DC, as he had vacated the unit earlier in the year and was not provided with his forwarding address.

I find that the opportunity to know the case against you is a fundamental aspect of the dispute resolution process. Based on the landlords' testimony, I am not satisfied that

tenant DC was served with the application or supporting documents in accordance with the *Act* or Rules of Procedure. Accordingly, I amend the landlords' application listing only tenant BN as the respondent, as BN was properly served.

#### Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit?

Are the landlords authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Are the landlords authorized to recover the filing fee for this application from the tenants?

#### Background and Evidence

The landlords testified that this tenancy began on May 6, 2017 on a fixed term basis. Rent in the amount of \$1,600.00 was payable on the first of each month. The tenants remitted \$800.00 for the security deposit at the start of the tenancy. Tenant BN vacated the rental unit on January 31, 2018 and \$660.00 of the \$800.00 security deposit was returned via e-transfer to tenant BN, on February 7, 2018.

The landlords are seeking authorization to retain the security deposit in the amount of \$140.00 to offset cleaning costs. The landlords testified that the unit was left dirty and required the two of them two hours to clean. The landlords calculated \$140.00 in cleaning costs based on a \$35.00 hourly rate (2 hours x \$35.00 x 2 cleaners). The landlords submitted copies of the condition inspection reports and photographs to support their claim.

The landlords testified that the forwarding address was received in writing from tenant BN on February 1, 2018.

#### Analysis

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit. The tenant may waive their right to the return of the security deposit through written authorization to the landlord.

Section 37 of the *Act*, establishes that when a tenant vacate a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The landlords received the forwarding address on February 1, 2018 and filed an application to retain the deposit on February 13, 2018, which is within the fifteen days allowable under the *Act*. I find the landlords complied with the requirement under section 38 to make an application to keep the deposit. Upon review of the photographs, condition inspection reports and undisputed testimony of the landlords I am satisfied that the tenant left the rental unit contrary to section 37(2) of the *Act*. Accordingly, I find the landlords are entitled to recover the cleaning costs in the submitted amount of \$140.00.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee for a total award of \$240.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain \$240.00 of the \$800.00 security deposit in full satisfaction of the monetary award. The tenant is entitled to the remaining \$560.00 security deposit balance. Based on the landlords' undisputed testimony that they have already returned \$660.00 of the security deposit to the tenant, I grant the landlords a monetary order of \$100.00.

### Conclusion

The landlords are entitled to \$240.00. I order the landlords to retain \$240.00 from the security deposit in full compensation of this amount. The tenant is entitled to the return of the balance of the security deposit. Because the tenant has already received \$660.00 of the security deposit, I grant the landlords a monetary order of \$100.00 for the outstanding balance.

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 10, 2018

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Residential Tenancy Branch