



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package of the other party and the submitted documentary evidence. Neither party raised any issues with service. As both parties have attended and have confirmed receipt of the notice of hearing package the submitted documentary evidence of the other party, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

Due to extensive discussions the hearing could not be completed. The hearing was adjourned for continuation. Both parties confirmed that the addresses provided on their initial applications were current and valid for delivery of the notice of an adjournment

letter. Both parties were advised of the adjournment process and cautioned that no further evidence should be submitted, nor would it be accepted.

On September 25, 2018 the hearing was reconvened with both parties and the hearing resumed.

#### Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage and recovery of the filing fee?

Are the landlords entitled to retain all or part of the security and/or pet damage deposits?

Is the tenant entitled to a monetary order for money owed or compensation, return of double the security/pet damage deposits and recovery of the filing fee?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on November 1, 2014 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated September 27, 2014. The monthly rent was \$800.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$400.00 and a pet damage deposit of \$400.00 were paid. No condition inspection reports for the move-in or the move-out were conducted.

The landlords' seeks a monetary claim of \$1,788.56 which consists of:

\$100.00	Estimated Repair, Wall Hole
\$200.00	Loss cost of broken bike frame/wheel
\$200.00	General Cleaning, 20 hours X \$10/hr.
\$388.56	Unpaid Utilities, Gas and Hydro
\$800.00	Loss of Rental Income, December 2017
\$100.00	Filing Fee

The landlords claim that the tenancy ended on December 5, 2017 when the tenant complied with an order of possession from the Residential Tenancy Branch. The landlords' claim that the tenant failed to remove his personal belongings until December 2, 2017 and that the rental space was left dirty requiring repairs and cleaning.

The landlords claim that a hole was found in the common hallway wall which was not present at the start of the tenancy. The landlords also claim that the tenant was alone in residence as the landlords were out of town at the time of the damage. The tenant disputes the claim stating that the bike fell in the middle of the night waking him to discover the hole in the wall. The landlords argued that the wall hole is located near the floor and that a bike falling over would not damage the wall in this manner. The landlord further argued that the hole is in line to where the pedals would be and that the tenant had probably kicked the bike driving the pedal into the wall. The tenant claimed that bike had fell across striking the bottom of the wall and that afterwards the tenant had picked it up and moved it. The landlords seek \$100.00 based upon a verbal estimate(s) that was received contacting various contractors.

The landlords also claim as part of this application that the bike when they discovered it upon their return was found with a bent frame and wheel. The landlords seek a \$200.00 recovery of cost as the bike had a broken frame/wheel. The landlords claim that a friend (who is a bike enthusiast) informed them that the bike was not repairable. The landlords stated that the bike was previous purchased 6 months prior to this incident at a local flea market for \$200.00. The tenant dispute this claim stating that he was “unaware” of the bike damage or how the frame/wheel were bent.

The landlord seeks a claim of \$200.00 for general cleaning costs at \$10.00/hour for 20 hours. The landlord stated that the tenants vacated the rental unit leaving it dirty requiring cleaning. The tenants disputed this claim. The landlord has provided 8 pages of photographs showing the condition of the rental unit at the end of tenancy. The tenants argued that the photographs submitted by the landlord pre-date the end of tenancy on November 18, 2017 before the tenants cleaned. The landlord argued that everything needed to be cleaned, but was unable to provide any further supporting evidence of cleaning or of the 20 hours for cleaning.

The landlord claims that \$388.56 in unpaid utilities remain outstanding for Gas and Hydro. The tenants acknowledged and accept this portion of the landlord's claim.

The landlord seeks \$800.00 in loss of rent as the tenants vacated the rental unit on December 5, 2017 and the landlord was unable to re-rent the unit for December 2017 and suffered a loss of the monthly rent of \$800.00. The landlord claims that the condition of the rental unit was “unshowable” and as such unrentable for December 2017. The tenant argued that there was no move-in inspection and that the tenant had received email messages from the landlord thanking him for his cleaning efforts. The tenant also stated that during move-out the weather was heavy with rain.

The tenant seeks a monetary claim of \$1,722.68 which consists of:

\$400.00	Return of Original Security Deposit
\$400.00	Compensation, Fail to Comply Sec. 38(6), Security Deposit
\$400.00	Return of Pet Damage Deposit
\$400.00	Compensation, Fail to Comply Sec.38 (6), Pet Deposit
\$100.00	Filing Fee
\$22.68	Recovery of Postage

Both parties confirmed that the tenancy ended on December 2, 2017 when the tenant returned the rental unit keys. The tenant's forwarding address in writing was given to the landlord on December 2, 2017 during the move-out. The landlord disputed the tenant's claim by stating that at no time has the tenant provided his forwarding address in writing for the return of the security and pet damage deposits. The landlord applied for dispute of returning the combined security and pet damage deposits on July 10, 2018.

### 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.

On the landlords' claim for a wall hole and a bent bike frame/wheel, I find that I accept the evidence of the landlords over that of the tenant on a balance of probabilities. However, the landlords rely on a verbal estimate of \$100.00 for the wall repair and an opinion of a friend (a bike enthusiast) that the bike was not repairable. On this basis, I find that the landlord has failed to establish the monetary amount as claimed, but has provided sufficient evidence that damage has occurred. As such, I grant the landlord an arbitrary nominal award of \$25.00.

On the claim for \$200.00 for compensation of an unrepairable bike frame, I find that the landlord has failed. The tenant has disputed the landlord's claim and relies upon the opinion of a friend/bike enthusiast who had declared that the bike was unrepairable. The photograph of the bike shows the condition as "very aged" with a rusted chain and that sufficient detail is lacking to determine if the bike was unrepairable. The landlord also relied upon verbal testimony that the bike was purchased for \$200.00 6 months prior at a flea market. As such, this portion of the landlord's claim is dismissed.

As both parties have agreed upon the issue of outstanding utilities of \$388.56, I find that the landlord has been successful in this portion of his claim.

On the landlords' claim of \$800.00 in loss of rental income, I find that the landlord has established a claim. The ending of tenancy was subject to the tenant complying with an order of possession for November 28, 2017, but that the tenant had not vacated the rental unit until December 2, 2017 when the keys were returned. The landlord claimed that they were not able to re-rent the unit for December 2017 and suffered a loss of December 2017 rent. On this basis, I prefer the evidence of the landlords over that of that tenant. The landlords are entitled to recovery of \$800.00 for loss of rental income.

The landlords having been partially successful is also entitled to recovery of part of the filing fee for \$50.00.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security and or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

In this case, both parties confirmed that the landlord has withheld the return of the combined security and pet damage deposits totaling, \$800.00. Both parties confirmed that the tenancy ended on December 2, 2017. The tenant has claimed that the tenant's forwarding address in writing was provided to the landlord for the return of the security and pet damage deposits on December 2, 2017. The landlords have argued that at no time has the tenant provided the forwarding address in writing to the landlord. The tenant was unable to provide any supporting evidence for service of the forwarding address to the landlords. On this basis, I find that the tenant has failed to provide sufficient evidence of service of the tenant's forwarding address in writing. The tenant's request for return of double the security and pet damage deposits is dismissed for lack

of evidence as section 38 of the Act requires that the landlords have 15 days from the date the tenant's forwarding address is received to either return it or file an application for dispute of its return. However, the tenant is entitled to return of the original combined \$800.00 deposits.

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the tenant's claim for recovery of litigation costs (postage of \$22.68) is dismissed.

The tenant having been only partially successful is only partially entitled to recovery of the filing fee for \$50.00.

The landlords have established a total monetary claim of \$1,263.56. The tenant is entitled to \$850.00. In off-setting these claims, I grant the landlords a monetary order for \$413.56.

### Conclusion

The landlords are granted a monetary order for \$413.56.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the 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