



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL, MNDCT, MNSD, FFT

### Introduction

This reconvened hearing dealt with applications from both the landlord and tenants pursuant to the Residential Tenancy Act (the “Act”).

The landlord applied for a monetary award for damages and loss pursuant to section 67 and authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants applied for authorization to recover the security deposit for this tenancy pursuant to section 38, a monetary award for damages and loss pursuant to section 67, and authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties appeared and were given a full opportunity to be heard, give evidence, make submissions and call witnesses. The female landlord RP primarily spoke on behalf of both co-landlords (the “landlord”).

Service of documents was confirmed at the earlier hearing and the earlier arbitrator found that both parties were sufficiently served with the materials in accordance with the *Act*.

A number of the items claimed by each party were dismissed in the earlier hearing. The interim decision of June 29, 2018 provides that:

I will however consider the landlord’s claim and items 1, 2, 7 and 8 of the tenants’ claim and dismiss items 3, 4, 5, and 6 of the tenants’ claim without leave to reapply due to *res judicata* as indicated above.

The landlord testified that a number of the items claimed by the landlord in their application were dismissed by the other arbitrator orally at the earlier hearing. The landlord said that the total amount of the monetary award that they are seeking which has not been dismissed is \$2,087.28.

### Issue(s) to be Decided

Is either party entitled to a monetary award as claimed?

Is either party entitled to recover the filing fee for their application from the other?

### Background and Evidence

This tenancy began in February, 2015. The monthly rent was \$750.00 payable on the first of each month. A security deposit of \$375.00 was paid at the start of the tenancy and is still held by the landlord.

The parties signed a Mutual Agreement to End Tenancy dated December 14, 2015 with an end date of December 21, 2015. The tenant did not participate in a move out inspection at the end of the tenancy. The tenant confirmed that he was present to return the keys to the landlord but did not feel the relationship was such that participating in the move out inspection was worthwhile.

The landlord testified that the rental unit was in a state of disrepair that required considerable cleaning and repairs after the tenant vacated. The landlord seeks a monetary award of \$2,087.28 for the following items:

<b>Item</b>	<b>Amount</b>
Cleaning of Suite	\$250.00
Painting	\$950.00
Carpet Cleaning	\$258.13
Oven Repair	\$479.99
Repair Snack bin Fridge	\$49.16
Filing Fee	\$100.00
<b>TOTAL</b>	<b>\$2,087.28</b>

The landlord submitted into evidence images of the rental suite, the condition inspection report completed by the landlord and copies of invoices, receipts and quotes for the work performed.

The tenant claims the amount of \$2,925.00 for the following items:

Item	Amount
2 Months Rent	\$1,500.00
December Rent	\$950.00
Filing Fee	\$100.00
Return of Security Deposit	\$375.00
TOTAL	\$2,925.00

The tenant submits that the landlord issued a letter notifying them that the tenancy was ending. The tenant submitted into evidence a copy of a letter from the landlord dated December 11, 2015 and a blank 2 Month Notice to End Tenancy. The tenant submits that pursuant to section 51 of the Act, they should be entitled to compensation in an amount equivalent to two month's rent under the tenancy agreement.

The tenant seeks the amount of \$950.00 which is the rent they paid for a new tenancy after moving out of the rental suite.

The tenant seeks the return of their security deposit and submits that they did not give consent that the landlord may retain any portion of the deposit.

The tenant also submits that they disagree with the conclusion of the other arbitrator who dismissed items included in the tenant's original claim on the basis of *res judicata*. The tenant said that these matters ought to be included in the present claim.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit and pet damage deposit in full or file for dispute resolution for authorization to retain the deposits 15 days after the later of the end of a tenancy and or upon receipt of the 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 section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit and pet damage deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit and pet damage deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a).

Section 35 of the *Act* outlines the requirement for the landlord and tenant to inspect the condition of the rental unit at the end of the tenancy. The *Act* provides that the landlord must offer the tenant at least 2 opportunities for the inspection. Regulations 16 and 17 provide that the parties must attempt in good faith to agree on a date and time for a condition inspection. I accept the parties' evidence that the tenants were given an opportunity to participate in a condition inspection on December 21, 2015 and they chose not to do so. I find that the tenants failed to attempt in good faith to propose an alternative time for an inspection. I find that the landlords made reasonable efforts to provide the tenant with two opportunities to participate in a condition inspection. Consequently, pursuant to section 36(1) of the *Act* I find that the tenants have extinguished any right to claim against the security deposit by failing to participate in a condition inspection at the end of the tenancy.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. Pursuant to section 7(2) of the *Act* the claimant must take reasonable steps to attempt to minimize the damage or loss.

I accept the evidence of the landlord that the rental unit was in a state of disrepair at the end of the tenancy. I find that the issues identified in the condition inspection report correspond to the nature and scope of work which the landlord testified they undertook. I find that the receipts, invoices and quotes for the work to be in line with what would be reasonably expected for damages shown in the images. Accordingly, I find that the landlord is entitled to a monetary award in the amount of \$2,087.28 for the cost of cleaning and repairs to the rental unit which were incurred as a result of the tenants.

The tenant claims the equivalent of two month's rent pursuant to section 51 of the *Act*. I find that there is no evidentiary basis for the tenants' entitlement to this amount. Section 51 of the *Act* provides that a tenant who receives a notice to end tenancy under section 49 is entitled to compensation. The evidence before me is that there is a letter issued by the landlord to the tenant dated December 11, 2015. The tenant chose to include a blank 2 Month Notice to End Tenancy for Landlord's Use form. This is not a notice under section 49. Even if it were the landlord who issued the tenant the blank 2

Month Notice, a blank form has no force or effect. I find that the tenant is not entitled to a monetary award for this item.

The tenant claims the rent paid for the new tenancy in December. I find that there is no evidence in support of the tenant's entitlement to a monetary award for this item. The evidence is that this tenancy ended by way of a Mutual Agreement to End Tenancy signed by the parties on December 14, 2015. The tenant testified that they chose to move out of the rental unit as they felt the relationship with the landlord was no longer working. I find that the rent paid by the tenant is not a loss that is attributable to the landlord and consequently I dismiss this portion of the tenant's claim.

The tenant submits that the earlier arbitrator erred in dismissing the portions of the tenant's claim on the basis of res judicata. As set out in the interim decision, an applicant is barred from making multiple applications involving the same claim that has been conclusively ruled upon. I find that the interim decision which dismisses portions of the tenant's application is a conclusive finding which I am not at liberty to reconsider.

As the landlord was successful in their claim the landlord may recover the \$100.00 filing fee for their application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' \$375.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

### Conclusion

I issue a monetary award in the landlord's favour in the amount of ~~\$1,812.28~~ **\$1,712.28** on the following terms:

Item	Amount
Cleaning of Suite	\$250.00
Painting	\$950.00
Carpet Cleaning	\$258.13
Oven Repair	\$479.99
Repair Snack bin Fridge	\$49.16
Filing Fee	\$100.00
Less Security Deposit	-\$375.00
<b>TOTAL</b>	<b><u><del>\$1,812.28</del> \$1,712.28</u></b>

The tenants must be served with this Order as soon as possible. Should the tenants 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.

The tenant's application is dismissed in its entirety without leave to reapply.

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 4, 2018

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Residential Tenancy Branch