



# 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 was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on June 21, 2018 (the “Application”). The Landlord sought compensation for damage to the rental unit. The Landlord sought to keep the security deposit. The Landlord also sought reimbursement for the filing fee.

The Landlord appeared at the hearing. The Tenants did not appear. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlord had applied for \$600.00 in compensation in the Application. The Landlord submitted a Monetary Order Worksheet seeking \$954.02 plus the filing fee. The Landlord did not file an amendment to change the amount claimed; however, I will consider the \$954.02 requested given the Monetary Order Worksheet is clear in relation to the amount requested and basis for that amount.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and Landlord’s evidence.

The Landlord testified that Tenant K.H. provided his address to her via text message. She had submitted a copy of this text which was received June 16, 2018. The Landlord testified that she sent the hearing packages to Tenant K.H. by registered mail on June 22, 2018. The Landlord testified that the other two Tenants told her to use Tenant K.H.’s address for correspondence.

I have reviewed the email correspondence submitted and see that the other two Tenants appointed Tenant K.H. to act on their behalf and Tenant K.H. sent an email June 20, 2018 stating that the Landlord could use his address as the forwarding address for all three Tenants. There are also emails from the other two Tenants June 21, 2018 and June 22, 2018 advising that their forwarding address is the same as Tenant K.H.’s.

The Landlord submitted Canada Post Customer Receipts showing three packages were sent to the Tenants at Tenant K.H.'s address. The Landlord advised that two of the packages were returned and Tenant K.H. signed for one of the packages.

The Landlord testified that she sent the evidence to Tenant K.H.'s forwarding address. She provided Tracking Number 1 in relation to this. With permission, I looked this up on the Canada Post website which shows the package was sent September 18, 2018 and signed for by Tenant K.H. September 21, 2018.

Based on the undisputed testimony of the Landlord, and evidence submitted, I find the Tenants were served with the hearing package and evidence in accordance with sections 88(d) and 89(1)(d) of the *Residential Tenancy Act* (the "Act"). I am satisfied based on the email correspondence that Tenant N.S. and R.R. appointed Tenant K.H. to act as their agent in this matter. Further, I accept that they provided Tenant K.H.'s address as their forwarding address. I find it sufficient that the Landlord sent the hearing packages and evidence to Tenant K.H. for all three Tenants.

Based on the undisputed testimony of the Landlord, and evidence submitted, I find the hearing packages and evidence were sent in time to allow the Tenants to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Landlord was given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the Landlord's evidence and oral testimony. I will only refer to the evidence I find relevant in this decision.

I have not considered the Tenants' evidence given they failed to attend the hearing and present it as required by rule 7.4 of the Rules of Procedure.

#### Issues to be Decided

1. Is the Landlord entitled to compensation for damage caused to the rental unit?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Water damage to kitchen floor	\$450.00
2	Cleaning on move out	\$120.00
3	Registered letter to Tenants	\$34.02
4	Burn and drawing on wood table	\$250.00
	<b>TOTAL</b>	<b>\$954.02</b>

I calculate the above to be \$854.02. I told the Landlord I would not consider item #3 as it is my view parties are not entitled to reimbursement for these costs.

A written tenancy agreement was submitted as evidence. It indicates that the Tenants are the tenants under the agreement and relates to the rental unit. The tenancy started September 1, 2017 and was for a fixed term ending April 30, 2018. The agreement refers to the Landlord collecting first and last months' rent. The Landlord confirmed she did not collect this and only collected \$1,200.00 as a security deposit. The Landlord confirmed she still holds this. The agreement is signed by the Tenants.

The Landlord testified that the Tenants vacated the rental unit April 30, 2018.

The Landlord testified that she received Tenant K.H.'s forwarding address via text on June 16, 2018.

The Landlord testified that she did not have an outstanding monetary order against the Tenants at the end of the tenancy. The Landlord did not take the position that the Tenants agreed in writing at the end of the tenancy that she could keep some or all of the security deposit.

The Landlord testified that no move-in or move-out inspection was done.

The Landlord testified as follows in relation to the items on the Monetary Order Worksheet.

***Water damage to kitchen floor - \$450.00***

The Landlord testified that the Tenants caused water damage to the kitchen floor. The Landlord submitted a photo of the kitchen floor prior to the tenancy which shows the floor was in fine condition and that there was no damage to the floor. The Landlord also

submitted photos of the kitchen floor at the end of the tenancy showing damage to the floor. The floor has turned black and looks like it is badly scratched around the back door.

The Landlord submitted an estimate for fixing the floor showing it will cost \$450.00 to \$500.00 to fix the portion of the floor that is water damaged.

I note that Tenant K.H. sent an email to the Landlord May 16, 2018 stating “And the wear and tear due to our wet shoes at the back of the house. These things are not considered substantial damage under the tenancy act” (emphasis added).

***Cleaning on move out - \$120.00***

The Landlord testified that the Tenants left the rental unit dirty. She said she had to hire a cleaning company to clean the rental unit. She testified that the cleaners were told to do the bathrooms and floors and that she would do the rest.

The Landlord had submitted photos of parts of the rental unit showing it was dirty upon move-out. The Landlord also submitted an invoice from the cleaning company showing the cleaning cost \$120.00. This was for four hours of cleaning. The invoice states that nothing had been cleaned in the rental unit. The invoice states that the cleaners did the kitchen, two bathrooms and the main floor. The invoice states that the cleaners could have spent 12 hours cleaning given the state of the rental unit.

I note that in Tenant K.H.’s email from May 16, 2018, he states that the Tenants want the full deposit back “minus the cleaning fee” as this is the only amount they agreed on.

***Burn and drawing on wood table - \$250.00***

The Landlord testified that the Tenants burned a hole in her wood table and drew a face into the top of the table.

The Landlord testified that she had to replace the table. She said she bought a used table for \$350.00 with delivery. She submitted a receipt showing this. She advised that she was only requesting \$250.00 because this is what she would have sold the wood table for.

The Landlord submitted photos of the burn mark and drawing on the table.

The Landlord testified that the Tenants acknowledged burning the table in their emails. I note this in the email from Tenant K.H. dated May 16, 2018 and note that he states the burn is a coal burn mark from herbal sheesha.

In relation to all of the items above, the Landlord testified that she lived in the rental unit up until the Tenants rented it and therefore knows the condition of the house. She specifically stated that the kitchen table was not damaged when she lived in the house.

### Analysis

Section 7 of the *Act* states:

(1) If a...tenant does not comply with this Act...or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance...must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the undisputed testimony of the Landlord that no move-in or move-out inspection was done, I find the Tenants did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*. Further, I find that the Landlord did.

Pursuant to section 38(1) of the *Act*, the Landlord was required to repay the security deposit or claim against it within 15 days of receiving the Tenants' forwarding addresses. However, the Landlord had extinguished her right to claim against the security deposit and therefore her only option under section 38(1) of the *Act* was to repay the deposit. Given the Landlord did not repay the deposit, I find the Landlord failed to comply with section 38(1) of the *Act*. Pursuant to section 38(6) of the *Act*, the Landlord cannot claim against the security deposit and must pay the Tenants double the amount of the deposit. Therefore, the Landlord must return \$2,400.00 to the Tenants.

However, the Landlord is still entitled to claim for compensation for damage to the unit and I consider that now.

Section 37(2) of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

***Water damage to kitchen floor - \$450.00***

Based on the undisputed testimony of the Landlord, evidence submitted and email from Tenant K.H., I find the Tenants caused water damage to the kitchen floor of the rental unit. I do not accept that this is reasonable wear and tear as stated by Tenant K.H. in his email to the Landlord. Based on the photos, I find the damage caused is extensive. Based on Tenant K.H.'s email, I find it was caused by the Tenants' wet shoes. I find this is the type of damage that could easily have been avoided by not wearing or bringing wet shoes into the house and onto the wood floor. The damage is not the type of damage one would expect responsible tenants to cause. I am satisfied that the damage is well beyond reasonable wear and tear and find the Tenants breached section 37 of the *Act* in this regard.

I accept that the Landlord must have the floor fixed given the extent of the damage. Based on the estimate submitted, I am satisfied fixing the floor will cost \$450.00 to \$500.00. I find this amount to be more than reasonable. I note that the amount only

relates to fixing the portion of the floor the Tenants damaged. Further, the Landlord has requested the lower amount contained in the estimate. I find the Landlord is entitled to the amount requested.

***Cleaning on move out - \$120.00***

Based on the undisputed testimony of the Landlord, evidence submitted and email from Tenant K.H., I find the Tenants left the rental unit dirty upon move-out. Based on the photos, I accept that the rental unit was not left reasonably clean and therefore that the Tenants breached section 37 of the *Act*.

I accept that the Landlord had to hire cleaners to clean the rental unit given the state of it. Based on the invoice submitted, I accept that it cost \$120.00 for the cleaners to clean the rental unit. I find the Landlord minimized her loss in this regard. I accept that she asked the cleaners to only do the main cleaning of the rental unit based on the undisputed testimony of the Landlord and the notes on the cleaning invoice. Further, I accept that the cleaning took four hours and therefore cost \$30.00 per hour which I find to be a reasonable amount. I find the Landlord is entitled to the amount requested.

***Burn and drawing on wood table - \$250.00***

Based on the undisputed testimony of the Landlord, evidence submitted and email from Tenant K.H., I find the Tenants burned the wood table. Based on the undisputed testimony of the Landlord, and evidence submitted, I also find the Tenants drew a face on the table. I find this damage to be beyond reasonable wear and tear. Again, one would not expect responsible tenants to leave a coal burn on a table or to draw a face into a piece of furniture. I find the Tenants breached section 37 of the *Act* in relation to the damage to the table.

I accept that the Landlord had to replace the table particularly given the drawing on the table. I accept that the Landlord purchased a used table based on her undisputed testimony and the receipt submitted. I accept that this cost approximately \$350.00 with delivery. I find the Landlord's request for \$250.00 more than reasonable. I find the Landlord minimized her loss by replacing her wood table with a used table. Further, she has only requested a portion of the replacement cost. I am satisfied that she is entitled to the amount requested.

In summary, I find the Landlord is entitled to the following compensation:

Item	Description	Amount
1	Water damage to kitchen floor	\$450.00
2	Cleaning on move out	\$120.00
3	Registered letter to Tenants	\$0.00
4	Burn and drawing on wood table	\$250.00
	<b>TOTAL</b>	<b>\$820.00</b>

Given the Landlord was partially successful in this application, I grant the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$920.00. However, the Landlord must return \$2,400.00 to the Tenants. Taking the amount of compensation owed into account, the Landlord must return \$1,480.00 to the Tenants. The Tenants are issued a Monetary Order in this amount.

### Conclusion

The Application is granted in part.

The Landlord is entitled to \$920.00. However, the Landlord must return double the deposit to the Tenants which equals \$2,400.00. Taking the amount of compensation owed into account, the Landlord must return \$1,480.00 to the Tenants. The Tenants are issued a Monetary Order in this amount. If the Landlord does not return \$1,480.00 to the Tenants, this Order must be served on the Landlord. If the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: November 07, 2018

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Residential Tenancy Branch