



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Decision Codes: FFL, MNDCL-S, MNDL- S

### **Introduction**

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$4066.24 for unpaid rent and damages
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

The tenant(s) failed to appear at the scheduled start of the Rescheduled Hearing which was 11:00 a.m. on November 5, 2018. A representative of the landlord was present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the schedule start time in order to enable the tenant to call in. The tenant(s) failed to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I then proceeded with the hearing. The representative of the landlord was given a full opportunity to present affirmed testimony, to make submissions and to call witnesses.

On the basis of the solemnly affirmed evidence presented at the hearing a decision has been reached. All of the evidence was carefully considered.

I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was served on the Tenant by mailing, by registered mail to where the Tenant resides on May 19, 2018. The hearing was originally scheduled for November 2, 2018. However, the Registry rescheduled it for today's date and time. A search of the audit notes indicates the Registry talked to both parties by telephone and sent out hearing letters to both parties.

### **Issues to be Decided**

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?

c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a one year written tenancy agreement that provided that the tenancy would start on March 1, 2017, end of February 28, 2018 and become month to month after that. The tenancy agreement provided that the tenant(s) would pay rent of \$1850 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$925 and a pet damage deposit of \$925 at the start of the tenancy for a total of \$1850..

The tenancy ended on April 30, 2018 and tenant vacated the rental unit at that time.

On April 19, 2018 the landlord e-mail the tenant stating that it has come to their attention that the Tenant had damaged the floor and demanding that the tenant fix the floor before vacating. The Tenant responded by e-mail stating she would not be doing the repairs as she had spoken to a contractor who told her that the reason there is damage is that the hardwood is old and not property sealed. The tenant also stated there was considerable damage to the floor with small marks etc. prior to her taking possession.

The repairs were completed on May 8, 2018 for a cost of \$1757.19. The landlord produced photos of the damage (appears to be water damage) and the ingoing and outgoing Condition Inspection Report.

The landlord testified he showed the property to prospective tenants at the end of April and the prospective tenants were not prepared to enter into a tenancy agreement for May 1, 2018 because of the condition of the floor and a concern that the landlord would not complete the repairs. The landlord also testified the prospective tenant were concerned that even if the repairs were done it would not be completed in a timely manner that would allow them to move in on May 1, 2018.

The landlord produced the copy of a tenancy agreement with the new tenant signed on May 14, 2018 with possession set for June 1, 2018.

Landlord's Application - Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person

permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

#### Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. I determined the landlord is entitled to \$180 for the cost of general cleaning.
- b. I determined the landlord is entitled to \$158.45 for the cost of carpet cleaning.
- c. The landlord claimed \$1757.79 for the cost of repairing the floors. I determined the tenant had caused damage to the flooring that exceeded reasonable wear and tear. I do not accept the statement in the tenant's e-mail that the floor was not properly sealed as the tenant failed to appear at the hearing and failed to present sufficient evidence to prove this allegation.

I determined the landlord is entitled to the depreciated value of the cost of the flooring. Policy Guideline 40 states the expected life of a hardwood floor was 20 years. The landlord testified he was not aware as to how old the floor was. However based on his experience he thought that the rental property was probably about 15 years old. I determined the flooring was original to the building. After considering depreciation I determined the landlord is entitled to \$439.25.

- d. I dismissed the landlord's claim for the cost of mailing, by registered mail. This relates to the cost of litigation. The only jurisdiction an arbitrator has relating to costs is the cost of the filing fee paid to the RTB registry.
- e. The landlord claimed the sum of \$1850 for the loss of rent for the month of May. I determined the Tenant is not fully responsible for this claim as depreciation must be considered and the evidence presented was that the prospective tenant was concerned that the landlord might not make the repairs in a timely fashion. The landlord failed to present sufficient evidence as to his efforts to mitigate the loss by re-renting the rental property for a date earlier than June 1, 2018. In the circumstances I determined the landlord is entitled to \$925 or half of the rent for the month of May 2018. I determined it was reasonable for the landlord to make the repairs and that those repairs could not be expected to be completed by May 1, 2018.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of plus \$1702.70 the \$100 filing fee for a total of \$1802.70.

Security Deposit

I determined the security deposit/pet damage deposit totals the sum of \$1850. I ordered that the landlord shall retain the sum of \$1802.70 from the security deposit. I further ordered that the landlord shall pay the balance of the security deposit/pet damage deposit in the sum of \$47.30 to the tenant upon the Tenant providing the landlord with her forwarding address in writing.

It is further Ordered that this sum be paid forthwith. The parties are given a formal Order in the above terms and the Applicant must be served with a copy of this Order as soon as possible.

Should the applicant fail to comply with this 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 final and binding on the parties.**

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: November 05, 2018

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Residential Tenancy Branch