



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL, MNDCL-S, MNDL-S, MNRL-S

### Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on October 15, 2013 and ended on April 30, 2018. The tenant was obligated to pay \$1850.00 per month in rent in and at the outset of the tenancy the tenant paid a \$925.00 security deposit which the landlord still holds. The tenant also paid a \$925.00 pet deposit but that was returned. Written condition inspection reports were not conducted at move in or move out. The landlord testified that the tenant left the carpets extremely dirty at move out. The landlord testified that she was given verbal authorization by the tenant to hire the carpet cleaners. The landlord testified that the tenant cut a large portion of a chain link fence in the yard as well as a metal pole that was in a concrete footing. The landlord testified that this was done without her permission and that the tenant left it damaged. The landlord testified that the tenant shorted the last months' rent by twenty five dollars.

The landlord is applying for the following:

1.	Repair Chain Link fence – estimate	\$681.25
2.	Unpaid Rent	25.00
3.	Carpet Cleaning	715.04
4.	Filing Fee	100.00
5.	Minus Deposit	-925.00
6.		
7.		
8.		
9.		
10.		
	<b>Total</b>	<b>\$596.29</b>

The tenant gave the following testimony. The tenant testified that the chain link fence was altered four years ago with the landlords' approval. The tenant testified that she offered to return it to its original condition and to the landlords' specifications, but was denied. The tenant testified that the hardware is still in the landlords' possession and that it could be done for less than \$100.00. The tenant testified that if the landlord says she was short on the rent she will take her word but it was not done intentionally. The tenant testified that she always paid cash and that the landlord didn't mention that she was short until several days later. The tenant testified that she told the landlord to come by and pick it up anytime as she lived next door, but the landlord did not. The tenant testified that the landlord imposed her own carpet cleaner onto the tenant and that she did not give the landlord her authorization to do that. The tenant testified that she

mentioned that she would be having a carpet cleaner coming at move out and was told by the landlord that she had already booked one. The tenant testified that she agreed with paying for the carpets but felt the amount sought was excessive.

### 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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords claim and my findings as follows.

#### Chain Link Fence- \$681.25

The landlord advised that they have not conducted this repair. The landlord has not provided sufficient evidence of “out of pocket costs” as required under section 67 of the *Act*. In addition, the landlord has failed to mitigate as noted above, by not allowing the tenant an opportunity to return the fence back to its original condition. Based on the above, I dismiss this portion of the landlords claim.

#### Unpaid Rent - \$25.00

The tenant advised that although she wasn’t sure if she had “shorted” the landlord she was agreeable to pay this amount, accordingly; the landlord is entitled to \$25.00.

#### Carpet Cleaning - \$715.04

The landlord testified that the home is 2500 square feet and has wall to wall carpets throughout except for the kitchen, bathroom and laundry room. It was explained in great detail to the landlord the vital and useful nature of the inspection report. Although condition inspection reports were not conducted at move in or move out, the tenant took responsibility for this claim. Residential Tenancy Policy Guideline 1 outlines a tenants

responsibility at move out which includes that a tenant is responsible for cleaning the carpets at move out. This was a four and half year tenancy; which included pets. The tenant agrees that she is responsible for carpet cleaning but feels that amount is excessive. The tenant submits that \$200.00 -250.00 is appropriate, I do not agree with either parties submission; I find the amount submitted by the landlord to be too high considering the limited documentation put forth by the landlord, and that the tenants was too low considering the size of the home and that she had pets. Based on the testimony of the parties, and the documentation before me, I find that the appropriate amount is \$400.00 based on the size of the home, that pets were in the home, and the notations made by the carpet cleaner. The landlord is entitled to \$400.00.

As the landlord has only been successful in claims in which the tenant took responsibility, I find that they are not entitled to the recovery of the \$100.00 filing fee.

### Conclusion

The landlord has established a claim for \$425.00. I order that the landlord retain \$425.00 from the security deposit in full satisfaction of the claim and that they return the remaining \$500.00 of the deposit to the tenant. I grant the tenant an order under section 67 for the balance due of \$500.00. This order may be filed in the Small Claims 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: November 08, 2018

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Residential Tenancy Branch