



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

This hearing involved cross applications made by the parties. On August 15, 2018, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to retain the security deposit in partial satisfaction of these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On November 20, 2018, the Tenant made an Application for Dispute Resolution seeking a return of her security deposit pursuant to Section 38 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Landlord and the Tenant attended the hearing. All in attendance provided a solemn affirmation.

The Landlord advised that she does not remember when she served the Notice of Hearing package, but she served it by registered mail. The Tenant confirmed that she received this package in the mail around August 26, 2018. Based on this undisputed testimony and in accordance with Sections 89 or 90 of the *Act*, I am satisfied that the Tenant received the Notice of Hearing package.

The Tenant advised that the Notice of Hearing package was not served to the Landlord as she did not realize that she was required to serve her. As such, I am not satisfied that the Landlord was served with the Notice of Hearing package in accordance with the *Act* and I dismiss her Application without leave to reapply.

The Landlord submitted that she did not serve all her evidence to the Tenant; however, the Tenant had been served with the copies of the sewer and garbage collection bills before the tenancy ended. The Tenant acknowledged that she received a copy of these bills. As the Landlord did not comply with the requirements of Rule 3.14 of the Rules of Procedure and serve the Tenant all the evidence before the hearing, only the evidence that was served (the sewer and garbage collection bills) will be accepted and considered when rendering this decision.

The Tenant submitted that she did not serve the Landlord her evidence. As her evidence was not served to the Landlord at all, the Tenant’s evidence was not accepted or considered when rendering this decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to monetary compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the original tenancy started on November 15, 2008. The most current tenancy agreement was signed on April 21, 2017 to commence as a nine-month fixed term tenancy starting on April 1, 2017 and ending on December 31, 2017. The parties agreed that the current Landlord purchased the property on July 1, 2017 and assumed this tenancy. Current rent was established at \$1,352.00 per month, due on the first of each month, and a security deposit of \$575.00 was also paid.

Both parties agreed that the Tenant's forwarding address in writing was mailed to the Landlord on August 10, 2018 and the Landlord confirmed that she received this.

The Landlord advised that she did not receive a move-in inspection report from the previous owner of the property and she stated that she did not complete a move-out inspection report with the Tenant. The Tenant confirmed that neither a move-in nor a move-out inspection report was conducted.

The Landlord provided a monetary order worksheet and advised that she was seeking compensation in the amount of **\$15.00** for the cost to replace two kitchen sink plugs that she claims were missing from the rental unit. She stated that she had seen them in the past and were not there at the end of the tenancy. She advised that she did not buy new ones to replace these as she stated that she purchased two used ones instead. When she was questioned how much she paid for them, she then stated that they were given to her by a friend for free.

The Tenant stated that she left these plugs in a container under the sink at the end of the tenancy; however, the Landlord advised that they were not there.

The Landlord advised that she was seeking compensation in the amount of **\$60.00** for the cost of replacing broken blinds in the bedroom and **\$60.00** for the cost of replacing broken blinds in front of the patio door. She stated that the thread on the bedroom window blinds was broken and they could not be raised or lowered. She stated that she did not buy new blinds for the current tenants but provided them with curtains instead. With respect to the patio blinds, she stated that some panels were broken and could not be re-inserted into the hooks. She submitted that she did not buy new blinds for the current tenants and is simply making them use the broken blinds instead.

The Tenant stated that both sets of blinds were damaged at the start of the tenancy and based on the age of them currently, the condition they were in at the end of the tenancy is due to normal wear and tear.

The Landlord submitted that she was seeking compensation in the amount of **\$155.46** for the cost of garbage collection from July 2017 to July 2018 and **\$56.23** for the cost of the sewer bill from July 2017 to July 2018. She advised that these items are not included in the tenancy agreement.

The Tenant advised that she had never paid these bills to the previous landlord, that there was no agreement in writing with the current Landlord agreeing to be responsible for these amounts, and that the Landlord advised that all utilities were included when she took over the property.

Finally, the Landlord submitted that the Tenant advised her that the clothes washer was broken and that it needed to be repaired. The Landlord stated that she was a first-time landlord and understood that it was her duty to fix this. She advised that she replaced the broken clothes washer and she was seeking compensation in the amount of **\$35.00** for the cost of labour to move this broken appliance and **\$275.00** for the cost of renting a clothes washer from September 2017 to July 2018.

The Landlord advised that the property that she purchased is divided into two rental units and that the contract of sale included the laundry machines in the lower suite. However, she stated that the clothes washer in the Tenant's rental unit was not part of this purchase. Thus, she does not know who owns this machine but surmises that it belongs to the Tenant. As well, she indicated that the tenancy agreement does not include laundry. As such, it was not her responsibility to fix this issue.

The Tenant advised that she called the Landlord to tell her that the timer was broken on the clothes washer and asked if she should call a repair person. The Landlord said that she would bring a new washer and did so a week later. However, she did not have anyone to help her move it, so the Tenant assisted her. The Landlord eventually replaced the broken washer approximately 10 days later. The Tenant advised that she had this washer in the rental unit from the start of the tenancy and that it was the Landlord's responsibility to fix this. She stated that if the washer belonged to her, she would have never asked the Landlord to fix it. As well, she stated that she was never advised by the Landlord that she would be charged a rental fee for the washer.

The Landlord stated that she was a first-time landlord and she was not knowledgeable of the *Act*. She stated that she responded to the Tenant's request to replace the washer even though she believed it was not her responsibility to replace or repair it.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 23 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed day. As well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not comply with the requirements of ensuring attendance for the condition inspections. However, in this case, these Sections of the *Act* pertain to a Landlord's right to claim for damage, and as the Landlord also applied for utilities owing, which would not be considered solely damage claims, the Landlord still retains a right to claim against the security deposit. As such, I am satisfied that the Landlord has not extinguished her right to claim against the security deposit.

Furthermore, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Pursuant to Section 38 of the *Act*, if the Tenant wants the security deposit returned, she must provide a forwarding address in writing to the Landlord first. The undisputed evidence is that the Tenant provided the Landlord with her forwarding address in writing on or around August 10, 2018. As the Landlord made her Application on August 15, 2018, I am satisfied that the doubling provisions of the *Act* do not apply.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claims for compensation in the amount of \$15.00 for the cost to replace two missing kitchen sink plugs, I find it important to note that the Landlord did not complete the move-in or move-out inspection reports and that she did not suffer a loss as she replaced these plugs for free, courtesy of her friend. As such, there is no evidence to substantiate the Landlord's cost of replacing these items and I decline to award the Landlord any compensation for this claim.

With respect to the Landlord's claims for compensation of the broken blinds in the bedroom and in front of the patio door; I find it important to note again that the Landlord did not complete the move-in or move-out inspection reports. Furthermore, the Landlord has not replaced these items, nor has she provided any evidence to support the cost of these items that she is claiming. Moreover, the Landlord has not made any attempts to fix the patio blinds and is simply allowing the current tenants to make due with them. Consequently, I am not satisfied that the Landlord has provided any evidence to substantiate that she should be awarded any compensation for these items as she has made no attempt to rectify the issue,

she has not justified the replacement cost of these items, and it does not appear as if the Landlord will even replace these items. Ultimately, I decline to award the Landlord any compensation for these claims.

With respect to the Landlord's claim for compensation of the garbage collection and sewer bills, while the Landlord stated that these items were not included in the tenancy agreement, the Tenant advised that she had never paid these bills in the past. Based on the testimony of the parties during the hearing, I am doubtful of the reliability of the Landlord's testimony as she primarily relies on her inexperience and ignorance as a first-time landlord. In combination with her unsubstantiated claims for missing and broken items and her apparent reluctance to replace these items, I find this causes me to question the Landlord's motives as an attempt to pass on homeowner costs to the Tenant. As such, I am not satisfied that the Landlord has established her claims and I decline to award the Landlord any compensation for these items.

Finally, regarding the Landlord's claims for the cost to repair and replace the clothes washer, I find it important to note that Section 32 of the *Act* states that the Landlord must repair and maintain the rental property. While the Landlord provided testimony with respect to why she believed it was not her responsibility to deal with, repair, or replace the washer, I do not find that her account is consistent with common sense or ordinary human experience. Her statement that she purchased both the upstairs and downstairs rental units, but the upstairs' washing machine was not included in the sale and thus not her responsibility does not make sense to me. Furthermore, despite the Landlord again relying on her inexperience as a first-time landlord, I find it dubious that she would take action and replace the washing machine if it truly was her belief that she did not own it and was not responsible for it. Based on a balance of probabilities, I find it reasonable to conclude that this washing machine was in the rental unit prior to the sale of the property and was included as part of the sale. As such, I am satisfied that the Landlord was responsible for the cost to repair and maintain the rental unit. Consequently, I dismiss these claims in their entirety as well.

As the Landlord was not successful in her claims, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this application. Furthermore, I Order that the Landlord return the security deposit in full.

As the Tenant was unsuccessful in her Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Section 67 of the *Act*, I grant the Tenant a conditional Monetary Order in the amount of **\$575.00** should the Landlord not repay the security deposit.

### Conclusion

I dismiss the Landlord's Application and the Tenant's Application for Dispute Resolution without leave to reapply.

The Tenant is provided with a conditional Monetary Order in the amount of **\$575.00**. This Order is enforceable only if the Landlord fails to repay the security deposit to the Tenant. The Order must be served on the Landlord by the Tenant. The Landlord must be served with **this Order** as soon as possible.

Should the Landlord 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.

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: December 17, 2018

---

Residential Tenancy Branch