



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This decision is in respect of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") made on July 13, 2018. The landlord seeks compensation from the tenant for various damages to the rental unit, pursuant to section 67 of the Act. In addition, the landlord seeks compensation from the tenant for recovery of the filing fee, pursuant to section 72(1) of the Act.

A dispute resolution hearing was convened on December 17, 2018 and the landlord, the tenant, and the tenant's advocate attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service of documents or evidence.

The landlord objected to the tenant's having an assistant or advocate present. However, I advised that this was permitted under the legislation. Section 74(4) of the Act states that a "party to a dispute resolution proceeding may be represented by an agent or a lawyer." Further, Rule 6.7 of the *Rules of Procedure*, under the Act, states that a "party to a dispute resolution hearing may be represented by an agent or a lawyer and may be assisted by an advocate, an interpreter, or any other person whose assistance the party requires in order to make his or her presentation."

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

### Issues to be Decided

1. Is the landlord entitled to compensation pursuant to section 67 of the Act?
2. Is the landlord entitled to compensation for recovery of the filing fee?

### Background and Evidence

The landlord testified that the tenancy commenced on May 15, 2015 and ended on July 1, 2018. Monthly rent was \$1,700.00 and the tenant paid a security deposit of \$850.00, which the landlord currently retains.

The landlord's application and particulars of her claim is for compensation for the following (edited for brevity): "(1) Water damage on maple kitchen island & kick boards, kick board in powder room bathroom, and phone desk (maple wood): estimated cost of repair \$1500.00; (2) Hole in master bedroom bathroom ceiling: estimated cost to put new drywall/paint/labour \$2000.00; (3) Damaged/broken window blinds: estimated cost of replace \$1700.00; and (4) False alarm invoice: \$106.00." The total claimed was \$5,306.00, though the landlord advised me that since obtaining more recent and accurate quotes or estimates, that the total amount is substantially more than the amount claimed. For example, the cabinets are estimated to cost approximately \$8,000.00, instead of the initial estimate of \$1,500.00. The landlord also submitted that she obtained an estimate from a cleaner to the effect that the house would cost \$200.00-\$300.00 to clean, and that it would cost an estimated \$146.00-\$281.00 to remove the garbage from the front of the house. No estimates were submitted by the landlord in support of any of the above-noted claims.

In support of her application and claim the landlord submitted a false alarm invoice (dated June 28, 2018) from the municipality in the amount of \$133.00 (\$106.00 if paid within 14 days of the invoice date). The landlord paid the invoice and submitted a receipt in the amount of \$106.00.

The landlord testified that a Condition Inspection Report was completed at the start of the tenancy, but that one was not completed at the end of the tenancy. A copy of the Condition Inspection Report was submitted into evidence. In addition, the landlord submitted several photographs into evidence depicting the alleged damage and condition of the rental unit.

The landlord testified that the major damage was water damage to the island in the kitchen and a phone desk, that there was a hole in the master bedroom's bathroom's ceiling, likely caused by water damage, and there were damaged and broken blinds. She further submitted that the tenant must have caused the water damage and did not make the landlord aware of what must have been a flood at some point. The water damage was brought to the attention of the landlord by the downstairs tenant.

The landlord noted that there have not been any tenants living in the rental unit since July 2018.

Tenant testified that fridge door fell off shortly after she moved in, and that a new refrigerator was put in. There was no walk through at the end of the tenancy. It was “basically just the landlord talking to me.” Nothing was filled out or done, in terms of a Condition Inspection Report.

The alarm system was updated and upgraded by the tenant. The tenant has asked for the alarm components back from the landlord, which the landlord has not returned.

Regarding the issue of water from the refrigerator’s door falling off, the tenant was not aware of how much water might have been there. The tenant never used the island as an eating island, and recycling bins obscured what might have been occurring from water damage. While the tenant noticed water coming from the refrigerator, she at first attributed it to the inaction of one of her three children, who may have been “sloppy with getting stuff out of the fridge.”

Regarding the damage to the desk, the tenant was not aware of any water damage until she was moving out and was unaware that there was any water dripping until the downstairs tenant told the landlord, who then told the tenant.

Regarding the hole in the ceiling, the tenant’s advocate submitted that this is just a cracking and peeling of the ceiling in master bedroom most likely attributable to the age of the house. The house was, from what the tenant’s advocate estimated, built around 1996.

Regarding the blinds, which the advocate noted were probably original to the house, had a broken blind cord and as such were simply not hung up. Next, regarding the garbage, the tenant did acknowledge that it took them some time to move out of the rental unit, and that, “yes, some of that garbage was ours” but that a lot of it was the downstairs tenants’ garbage.

Finally, regarding the false alarms, the tenant was only aware of one time when the alarm went off when she was not home. There was another time when police attended (not in response to an alarm going off) which was in regard to a shooting in the neighbourhood.

In his final submissions, the tenant's advocate sought the return of the tenant's security deposit and requested that the amount be doubled, pursuant to the Act.

The landlord in her final submission noted that the tenant's testimony is "absurd and ridiculous" and that neither the tenant nor her advocate were being truthful and honest with me. The landlord reiterated her earlier argument about the water damage and the fact that the tenant never brought any of this to her attention during the tenancy.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, the applicant must prove each of the following four criteria, on a balance of probabilities, in order for me to consider whether I grant an order for compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. if yes, did loss or damage result from that non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize their damage or loss?

I note that section 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In this case, the landlord claims that the tenant caused damage to the kitchen island, and phone desk, cabinets, the bathroom ceiling, and the blinds, and, that the tenant left

garbage which had to be removed by the landlord. The tenant, or her advocate, did not outright dispute that the tenant caused the water damage, but pointed out that she was largely unaware of the extent of the damage. The tenant also did not dispute that they left garbage in the front of the property, which had to later be removed by the landlord. Finally, the tenant—who paid for an upgraded alarm system—did not provide a satisfactory explanation as to why the alarm system went off, thus resulting in a false alarm call to the property.

Based on the oral testimony of the parties, I find that the landlord has proven a *prima facie* breach of the Act by the tenant, and that but for the breach the landlord would not have suffered loss or damage. I also find that, since the tenant's alarm resulted in a charge to the registered owner of the property (the landlord), the tenant is liable for reimbursing that cost to the landlord.

Turning now to the third criteria that must be proven on a balance of probabilities, that is, has the applicant proven the amount or value of their damage or loss, I find as follows.

*Residential Tenancy Policy Guideline 16 – Compensation for Damage or Loss*, states that (on page 2, my emphasis) a “party seeking compensation should present **compelling** evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.”

In this case, the landlord provided no documentary evidence to establish the value of her damage or loss. With the exception of a receipt for payment of the false alarm invoice charge, the landlord submitted no copies of estimates from a cleaner, no estimate for the blinds replacement, no estimate from a contractor in regard to the cabinets, phone desk, bathroom ceiling, or anything else related to the purportedly water damaged property. Indeed, the difference between the initial estimate (which does not appear to be based on anything) of \$1,500.00 to a revised estimate of \$8,000.00 is substantial.

In the absence of any documentary evidence establishing the value of the landlord's damage or loss, I do not find that the landlord has proven the amount or value of the loss or damage. As the landlord has failed to establish the value of the loss or damage, I need not consider the last criteria.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving her claim for damages for the items set out in her particulars (with the exception of the false alarm invoice charge), and dismiss that aspect of her claim without leave to reapply.

However, I do find that the landlord has proven on a balance of probabilities her claim for the false alarm invoice charge of \$106.00, and I award her that amount. As the landlord is partly successful with her application, I grant her a monetary award of \$50.00 for partial recovery of the filing fee, for a total monetary award of \$156.00.

I order that the landlord may retain \$156.00 of the tenant's security deposit in full satisfaction of the award granted. I further order that the landlord must return the balance of the tenant's security deposit in the amount of \$694.00 to the tenant within 15 days of the receipt of this decision. The tenant may apply for the return, and doubling, of the security deposit should the landlord not return the deposit within 15 days of the receipt of this decision, pursuant to section 38 of the Act.

### Conclusion

I grant the landlord a monetary award in the amount of \$156.00, of which this amount may be retained from the tenant's security deposit.

I order that the landlord return \$694.00 of the tenant's security deposit to the tenant within 15 days of her receiving this decision.

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: December 17, 2018

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Residential Tenancy Branch