



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL MNDCL-S MNDL-S

### Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover 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 affirmed testimony, to make submissions and to call witnesses. The landlord was assisted by their family member.

As both parties were present service of documents was confirmed. The tenant confirmed receipt of the landlord's application for dispute resolution and evidence. The tenant testified that they have not submitted any evidence. Based on the testimonies I find that the tenant was served with the landlord's application and evidence in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

Is the landlord entitled to recover the filing fee for the application?

### Background and Evidence

The parties agreed on the following facts. This tenancy began in 2006 and ended in December, 2016. The tenant paid a security deposit of \$425.00 at the start of the tenancy and it is still held by the landlord. The tenant did not participate in a condition inspection report at the start or the end of the tenancy.

The landlord testified that they gave the tenant two opportunities to participate in a move-out inspection and the tenant failed to attend on either occasion. The landlord submitted the Notices posted informing the tenant of the final opportunity for an inspection. The tenant said that they did not receive the written notice as they were not residing in the rental unit at the time the Notice of Opportunity for Inspection was posted on the rental unit door.

The tenant testified that they did not participate in a condition inspection report at any time during the tenancy. The tenant said they have not given written authorization that the landlord may retain any portion of the security deposit for this tenancy. The tenant testified that they felt the landlord denied them the opportunity to clean the rental unit as the move was rushed. The tenant confirms that there were considerable items left in the rental unit.

The landlord seeks a monetary award in the amount of \$6,013.46. The landlord submitted into evidence photographs of the suite as well as receipts for the cost of cleaning and repairs. The landlord testified that the damage to the rental unit was beyond that which would normally be expected from wear and tear.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

I accept the undisputed evidence that the tenant failed to participate in a condition inspection report both at the start and end of the tenancy. I accept the landlord's evidence that they provided written notice to the tenant of the opportunity to participate in an inspection. I do not find the tenant's position that they did not receive the notice until after the scheduled time as they were staying elsewhere to be persuasive. Even if the tenant was not residing regularly in the rental suite they had not provided the landlord with an alternate address for service and the landlord served notice in accordance with the *Act*. I find that the tenant failed to participate in a condition

inspection report and relinquished their right to claim against the security deposit pursuant to sections 24 and 36 of the *Act*.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

Policy Guideline 40 provides a general guide for determining the useful life of building elements. The Guideline states that an arbitrator “may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant’s responsibility for the cost or replacement”. In the present case, many of the building elements were approaching the end of their expected useful life at the end of the 10 year tenancy. Because of this, I find that the tenant is only responsible for the damage or loss to the rental unit in excess of the expected wear and tear.

I find that the evidence submitted by the landlord show that the damage to the rental unit was more than would be expected from simply a long term tenancy. The photographs and the testimony of both parties confirm that the rental suite was left in disarray with furniture, possessions and items left in the suite. The receipts for cleaning, maintenance and replacement of fixtures show that the damage was more than cosmetic. I find that the landlord has provided sufficient documentary evidence in support of their monetary claim for \$6,013.46. I find that the cost of cleaning and repairs is more than simply addressing the expected wear and tear but dealing with damage caused by the tenant’s negligence.

As the landlord’s application was successful the landlord is also entitled to recover their filing fee.

### Conclusion

I issue a monetary award in the landlord’s favour in the amount of in the following terms:

<b>Item</b>	<b>Amount</b>
Monetary Award	\$6,013.46
Filing Fee	\$100.00
Less Security Deposit	-\$425.00
Less Interest on Deposit of \$425.00 calculated to December 27, 2018, date of decision	-\$13.78
<b>Total Monetary Order</b>	<b>\$5,674.68</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 27, 2018

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Residential Tenancy Branch