



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, MNDL-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
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

### Issue(s) 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 recover the filing fee for this application from the tenant?

### Background and Evidence

The landlord gave the following testimony. The tenancy began on June 1, 2008 and ended on August 1, 2018. Rent at move out was \$1595.00 per month. The tenants paid a security deposit of \$750.00 at the outset of the tenancy. The landlord did not submit a written condition inspection report for this hearing. The landlord testified that there was a no smoking clause as part of the tenancy. The landlord testified that the garage stunk of cigarette smoke and that the walls had a yellow hue to them. The landlord testified that he found cigarette butts in the garage. The landlord is seeking the following costs; \$289.48 for paint and materials, \$140.00 for the labour to repaint the garage and the \$100.00 filing fee for this application. The landlord seeks to retain \$509.48 from the deposit that he holds in trust.

The tenants gave the following testimony. LP testified that she adamantly disputes the landlords' allegation that they smoked in the garage. LP testified that her husband did a lot of woodworking in the garage and that there was a lot of sawdust that smelt like something was burnt. LP testified that an inspection of the home was not done at move in or move out. JP testified that the landlord has not provided enough evidence to prove his claim.

### 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.

The landlord provided one very poor quality picture of a wall but did not provide any context or information about it. In addition, the landlord did not provide a written copy of a written condition inspection report. It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support his claim and I therefore dismiss their application in its entirety as he has failed to satisfy all four factors as noted above.

### Conclusion

The landlords' application is dismissed in its entirety without leave to reapply. The landlord must return the \$750.00 security deposit and the \$8.56 interest that has accrued. I grant the tenants an order under section 67 of the *Act* for the balance due of \$756.58. 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: January 04, 2019

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Residential Tenancy Branch