



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD FFL

### Introduction

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

- an Order to retain the security or pet deposit pursuant to section 38 of the *Act*, and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the landlord and the tenant attended the hearing by way of conference call. All parties present were given a full opportunity to be heard, to present testimony and to make submissions.

The tenant explained he had not received the landlord's application for dispute or evidentiary package and had only become aware of the dispute because of an automatically generated email he received from the Residential Tenancy Branch. The landlord testified she sent copies of all her documents, along with her application for dispute by way of Canada Post Registered Mail. She said these documents were sent to the forwarding address provided to her by the tenant following the conclusion of the tenancy on October 8, 2018. Copies of the Canada Post Registered Mail receipts were included with her evidentiary package and orally during the hearing. The tenant acknowledged that he had provided the landlord with a forwarding address for service but said he did not actually reside at the address which was given to the landlord. Furthermore, the tenant said he did not in fact reside in the province.

I find the landlord made significant efforts to serve the tenant in a manner prescribed by sections 88 & 89 of the *Act*. I find the landlord had little reason to believe the forwarding address which was provided to her by the tenant at the conclusion of the tenancy would not be accurate. I therefore find, pursuant to section 90 of the *Act* the tenant is deemed served with the landlord's application for dispute and evidentiary package on October 13, 2018, five days after their posting.

Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord retain the tenant's security deposit?

Can the landlord recover the filing fee?

Background and Evidence

The landlord explained this tenancy ended by way of Mutual Agreement on August 31, 2018 following arbitration before the Residential Tenancy Branch on August 28, 2018. Rent was \$800.00 per month and a security deposit of \$400.00 paid at the outset of the tenancy continues to be held by the landlord.

The landlord said she was seeking a monetary award of \$1,597.10 as follows:

- Cleaning/Repairs - \$480.00
- Filing Fee - \$100.00
- Registered Mail - \$17.10
- Loss of Rent - \$400.00
- Laminate Contractors - \$600.00

= \$1,597.10

The landlord said the tenant left the rental unit in a poor state of repair which required several repairs following the conclusion of the tenancy. As part of her evidentiary package the landlord provided several photos purporting to show the damage to the rental unit, along with cleaning she argued was necessary. In addition, the landlord included a copy of the condition inspection report which she said fairly represented the poor state of the rental unit.

The tenant disputed the landlord's claim in its entirety. The tenant said the unit had been subject to normal wear and tear and explained he had made no effort to damage the rental unit. The tenant sought a dismissal of the landlord's application. The tenant acknowledged providing his forwarding address to the landlord on September 27, 2018 but explained he no longer lived in the province and did not in fact reside at the address

in question. The tenant said the forwarding address he had provided to the landlord was associated with a friend.

### 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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* 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. In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award.

The landlord argued she was entitled to a monetary award of \$1,597.10 as a result of damage to the unit and the labour associated with repairing and cleaning the rental unit. In addition, the landlord sought unpaid rent for two weeks in September 2018 because of the extensive cleaning and repairs required following the tenant's departure. The landlord said she was unable to rent the unit for September 1, 2018 as she had originally intended because of the scope of work which needed to be undertaken.

The tenant dismissed the landlord's argument. Saying the unit had been subject to normal wear and tear. The tenant said he had been instructed by the landlord to vacate the suite on August 31, 2018 and was not given sufficient time to clean, tidy and repair the suite. The tenant explained he felt rushed to vacate the premises and therefore had no time to properly attend to the rental unit.

After having considered the oral testimony of both parties and having reviewed the evidence submitted, I find the landlord has sufficiently demonstrated she is entitled to a monetary award as requested. I accept the landlord's submissions and evidence that the unit was left untidy and required significant cleaning following the tenant's departure. Furthermore, I dismiss the tenant's argument that the rental unit had been subject to "normal wear and tear." I find the landlord's evidence to be detailed and compelling and to sufficiently demonstrate that the property had been subject to wear and tear which could not be associated with "normal use" as is described in *Residential Tenancy Policy Guideline #1*. Many of the photos provided to the hearing by the landlord demonstrated large gouges in the walls and floors. For these reasons, I allow the landlord to recover

the entire portion of her application for a monetary award, less the Canada Post receipts. This is an item not covered by section 67 or 72 of the *Act*.

Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to offset the monetary award granted in his favour, by retaining the tenants' security deposit.

As the landlord was successful in her application, she may recover the \$100.00 filing fee from the tenant.

### Conclusion

I issue a Monetary Order of \$1,180.00 in favour of the landlord as follows:

Item	Amount
Cleaning and Repairs	\$480.00
Loss of Rent	400.00
Labour for Laminate	600.00
Return of Filing Fee	100.00
Less Security Deposit	(-400.00)
<b>Total =</b>	<b>\$1,180.00</b>

The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: January 25, 2019

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Residential Tenancy Branch