



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LE GERS PROPERTIES INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

On October 3, 2018, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

F.D. and P.W. attended the hearing as agents for the Landlord. The Tenant did not attend the hearing. All in attendance provided a solemn affirmation.

The Landlord advised that the Notice of Hearing package was served by registered mail on October 3, 2018 and they provided a tracking number for this package (the registered mail tracking numbers are on the first page of this decision). The address for service that the Landlord used was provided by the Tenant via email on September 19, 2018. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Tenant was deemed to have received the Landlord’s Notice of Hearing package five days after it was mailed.

The Landlord advised that they served their evidence to the Tenant by registered mail on January 10, 2019 to the address the Tenant provided on September 19, 2018. The Tenant also emailed the Landlord on October 3, 2018 and provided a different address. Consequently, the Landlord also served their evidence to this address by registered mail on January 10, 2019. I am satisfied that this evidence was served in compliance with Rule 3.14 of the Rules of Procedure, and as such, I have accepted this evidence and will consider it when rendering this decision.

All parties 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 a Monetary Order for compensation?
- Is the Landlord entitled to recover 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.

The Landlord stated that the tenancy started on October 1, 2017 and ended on September 30, 2018 when the Tenant gave up vacant possession of the rental unit. Rent was established at \$1,090.00 per month, due on the first day of each month. A security deposit of \$545.00 was also paid.

The Landlord advised that a move-in inspection report was conducted with the previous owner of the rental unit and the Tenant. Both parties signed and agreed on September 28, 2017 that the premises was brand new at the start of the tenancy and that there were no deficiencies. This report was not submitted as documentary evidence.

The Landlord advised that a move-out inspection report was conducted on September 30, 2018 and the inspection was conducted with the Tenant. This signed move-out inspection report, indicating that there were some deficiencies upon move-out, was submitted as documentary evidence.

The Landlord submitted that they are seeking compensation in the amount of **\$103.95** for the cost of carpet cleaning. They referenced the tenancy agreement that was submitted into evidence and cited clause 24 which required the Tenant to have the carpets cleaned at the end of the tenancy. They referenced the invoice submitted of the company that cleaned the carpet to substantiate this claim.

The Landlord submitted that they are seeking compensation in the amount of **\$21.84** for the cost of registered mail fees. However, they were advised during the hearing that there are no provisions in the *Act* to compensate a party for these types of claims. As such, this claim was dismissed in its entirety.

The Landlord submitted that they are seeking compensation in the amount of **\$170.00** for the cost of cleaning the rental unit. They stated that the Tenant advised them that he had no time to clean the rental unit before he vacated. They referenced a number of pictures submitted as evidence that demonstrated that the Tenant did not leave the rental unit in a re-rentable state. They also provided an invoice for the cleaning costs. They advised that the amount of cleaning required took over 6 hours.

Finally, the Landlord submitted that they are seeking compensation in the amount of **\$20.00** for the cost of replacing two sink tub stoppers that were removed from the rental unit.

The Landlord advised that the Tenant provided his forwarding address by email on September 19, 2018. The Landlord advised that they returned two cheques totaling the Tenant's security deposit by mail within 15 days of receiving the Tenant's address.

### 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.

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 complete the condition inspection reports. Based on the undisputed evidence before me, I am satisfied that the Landlord complied with the *Act* and conducted a move-in and move-out inspection report. Therefore, the Landlord still retains a right to claim against the security deposit.

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*.

The undisputed evidence is that the forwarding address in writing was provided to the Landlord by email on September 19, 2018, that the Landlord returned the deposit in full within the 15-day frame, and that the Landlord made their Application within the 15-day frame to claim against the deposit as well. As the Landlord was entitled to claim against the deposit still, and as they complied with Section 38(1) of the *Act* by returning the deposit in full and/or making a claim within 15 days, I find that they have complied with the requirements of the *Act*. Therefore, the doubling provisions 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 claim in the amount of \$103.95 for the cost of carpet cleaning, I am satisfied from the undisputed evidence before me that the Landlord has established that they should be granted a monetary award in the amount of **\$103.95** to rectify this issue.

With respect to the Landlord's claims of \$170.00 for the cost to clean the rental unit, the Tenant is responsible for leaving the rental unit in a re-rentable state at the end of the tenancy. Based on the undisputed evidence presented before me, I am satisfied that the Landlord's submissions, on a balance of probabilities, are more likely than not legitimate. As such, I find that the Landlord has established a claim for a monetary award in the amount of **\$170.00**.

With respect to the Landlord's claims of \$20.00 for the cost to replace two sink stoppers, based on the photographic evidence and the testimony of the Landlord, I am satisfied that these were missing and had to be replaced. As such, I find that the Landlord has established a claim for a monetary award in the amount of **\$20.00** to rectify this issue.

As the Landlord was successful in this Application, I find that they are entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenant to the Landlord**

Carpet cleaning	\$103.95
Cleaning	\$170.00
Replacement sink stoppers	\$20.00
Filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$393.95</b>

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$393.95** 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: February 4, 2019

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Residential Tenancy Branch