



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AQUATERRA MANAGEMENT  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL MNDL-S

### Introduction

This hearing dealt with the landlord's application under the *Residential Tenancy Act* (the *Act*) seeking:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants 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 corporate landlord was represented by its agent CF (the "landlord").

As both parties were present service of documents was confirmed. Each party testified that they were in receipt of the other's materials. Based on the testimonies I find that all documents were served on the respective parties in accordance with sections 88 and 89 of the *Act*.

During the hearing the landlord made an application requesting to amend the monetary amount of their claim. The landlord said that since filing their application based on quotations they have received more accurate receipts for the amount of losses. As I find that obtaining more accurate figures of losses is reasonably foreseeable, in accordance with section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, I allow the landlord to decrease the monetary claim from \$328.00 to \$258.31.

### 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 from the tenants?

### Background and Evidence

The parties agreed on the following facts. This tenancy began in July 2017. The monthly rent was \$1,550.00 payable on the first of each month. A security deposit of \$775.00 was collected at the start of the tenancy and is still held by the landlord. The tenants gave written notice to end the tenancy on August 27, 2018. The tenants also provided a written forwarding address at the same time.

The tenants did not participate in a move out inspection and the landlord completed a condition inspection report on September 30, 2018. A copy of the inspection report was submitted into evidence. The tenants submit that they cleaned the suite prior to vacating and submitted into written evidence a copy of a report prepared by a third-party as to the state of the rental suite.

The landlord testified that there were some costs for cleaning of the suite and that the tenants failed to return a laundry card for the building. The landlord submits that the total cost associated with the end of the tenancy is \$258.31. The landlord submitted into evidence copies of receipts and invoices for some of the costs.

### 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 deposits 15 days after the later of the end of a tenancy and or upon receipt of the tenant's provision of a forwarding address in writing.

In the present case I find that the tenancy ended on September 30, 2018 as the tenants had paid rent in full for that month. The landlord filed their application for dispute resolution on October 11, 2018, within the 15 days provided under 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.

I accept the evidence of the landlord that there were some cleaning and work required at the end of the tenancy. I find the landlord's figures to be reasonable under the circumstances. While I accept the tenant's submission that they engaged in cleaning themselves, I find that the landlord still needed to perform some additional work. Based on the evidence of the parties I find that the landlord is entitled to a monetary award in the amount of \$258.31.

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

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$358.31 of the \$775.00 security deposit in full satisfaction of the monetary award issued in the landlord's favour.

### Conclusion

The landlord is authorized to hold \$358.31 of the security deposit for this tenancy.

The landlord is ordered to return the balance of \$416.69 to the tenants.

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 7, 2019

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Residential Tenancy Branch