



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

On October 11, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for damages, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

Should the Landlord receive a Monetary Order for damages, in accordance with Section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the claim, in accordance with Sections 38 and 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

### 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 and the Tenant agreed on the following terms of the tenancy:

The one-year, fixed-term tenancy began on September 1, 2016 and ended on September 30, 2018. The monthly rent at the end of the tenancy was \$2,385.00. The Landlord collected and still holds a security deposit of \$1,150.00.

The Landlord testified that a move-in condition inspection occurred on August 29, 2016 and a written report was completed and signed by both parties. A move-out condition inspection occurred on September 30, 2018, and the Landlord initially stated that the Tenant did not attend and then corrected herself to say the Tenant did attend but did not walk through the rental unit and did not sign the condition inspection report. The Landlord provided a copy of the Condition Inspection Report with the following information:

- Handwriting on the top of the report indicating the file number for this hearing, the Landlord's access code, and notes indicating that the Tenant did not show up to do the move-out inspection.
- A completed move-in inspection; incomplete move-out inspection.
- The Landlord's notes on page 3 to indicate that they wanted the Tenant to agree to "deduct the strata fine \$600.00 off from the sec. deposit. (The management company) will give the \$600.00 on behalf of tenant the strata (undecipherable) the fine."
- No move-out signature from any of the parties.

The Landlord stated that the Landlord did a move-out inspection the next day, without the Tenant, on October 1, 2018, and noted the condition of the unit and took pictures.

The Tenant testified that both he and his work partner met with the Landlord's representative on September 30, 2018 at 6:00 p.m. and conducted a walk-through and move-out inspection of the rental unit. The Tenant stated that they took pictures of the unit while they walked through, and that the Landlord's representative indicated that he was very happy with the condition of the unit.

The Tenant stated that the representative brought out the Condition Inspection Report and wrote down the sentence about agreeing to a \$600.00 deduction from the security deposit. The Tenant did not agree to this and refused to sign the condition inspection report. The representative became frustrated, put the report away and asked the Tenant to leave the premises.

The Tenant stated that they did not have the opportunity to provide the forwarding address on the move-out inspection report and instead, dropped off a letter, in person, to the Landlord's business on October 1, 2018.

Landlord's monetary claim:

The Landlord stated that she was involved in a previous dispute resolution hearing with the Tenant and that they reached a settlement regarding the end of the tenancy. The Landlord stated she submitted evidence in relation to a monetary claim regarding a Strata Council fine for the Tenant; however, that this issue was not dealt with during the previous hearing. The Landlord stated that she did not re-submit that evidence for the purposes of this hearing, regardless of making the same monetary claim.

The Landlord did submit documents that indicated that the Strata Council had concerns that the Tenant was conducting short-term rentals from the rental unit. The Landlord stated that they were aware that the Landlord's company would be paying the rent; however, understood that the Landlord would be living in the rental unit with his wife. The Landlord testified that the Strata levied a fine for the short-term rentals, in the amount of \$600.00. The Landlord submitted a statement of account dated, September 18, 2018, that indicated the fine was outstanding for the Landlord.

The Landlord testified that she has not paid the fine and that arrangements had been made for the Tenant to present his arguments to the Strata Council. The Landlord acknowledged that the Tenant had a meeting time set with the Strata on October 2, 2018; however, that the meeting was cancelled. The Landlord said that the Strata Council promised to arrange another meeting but have not followed through. The Landlord stated that she wanted to see if the Strata had made a final decision and that she is not sure if there is still an opportunity for the Tenant to meet with the Strata.

The Landlord is claiming a \$600.00 loss due to the Tenant incurring a fine from the Strata Council regarding short-term rentals and contravening the related terms included in the Strata Corporations Bylaws.

The Landlord testified that the Tenant left the rental unit in need of cleaning and provided pictures of a dirty fridge, microwave and cabinet. The photos were black and white and undated. The Landlord submitted an invoice from her company that indicated that \$300.00 was charged for the cleaning; no further details about the number of hours or what was cleaned were provided.

The Landlord stated that the Tenant failed to replace many lightbulbs and that there was a missing lamp shade. The Landlord submitted an invoice from her company that indicated that \$130.00 was charged to replace the lightbulbs and shade; however, there was no indication of how many bulbs were replaced, what they cost or where the new lampshade was purchased.

The Landlord stated that a bi-fold door was broken and submitted a picture of a bi-fold door. The Landlord submitted an invoice from her company that indicated that the bi-fold door was repaired for the cost of \$80.00. No details were provided regarding how the door was broken, what was replaced or how long the job took.

The Landlord stated that a handle from a bathroom faucet was missing upon the Tenant vacating the rental unit. The Landlord submitted a black and white picture of a faucet that was missing the cold-water handle. The Landlord submitted an invoice for the purchase of a new faucet, in the amount of \$396.67, and stated that that was the cost for the replacement and installation of the faucet.

The Landlord testified that the Tenant had made modifications to the front door lock and that the frame had been damaged and a proper dead-bolt not properly replaced. The Landlord submitted an invoice for \$388.50 to have the door and frame patched, re-drilled and a dead bolt installed.

The Landlord has made a monetary claim that included \$600.00 in fines from the Strata Council and \$1,295.17 in damages to the rental unit.

#### Tenant's Evidence:

The Tenant testified that he intentionally added his business name to the Tenancy Agreement and that the Landlord was aware that the rental unit would be used for himself and his workers. The Tenant stated that the Strata Council did not know of this

arrangement and rather than understanding that they were the Tenant's employees, the Strata thought that they were short-term renters.

The Tenant stated that he attended the pre-arranged Strata Council meeting on October 2, 2018 and learned that the Landlord was meeting with the Strata and because he was no longer a tenant, that the Strata did not want to speak to him. The Tenant asked the Landlord about the results of the meeting and to provide him with a statement of account that showed the fine was still outstanding. The Tenant said that the Landlord has not responded to this request.

The Tenant stated that the rental unit had been cleaned and the manager, who walked through the rental unit during the 15-20-minute inspection, was happy with the condition. The only issue that the manager was concerned about was the \$600.00 fine. No other concerns were documented when the manager attempted to obtain the Tenant's signature to release a portion of the security deposit. The Tenant is questioning why the Landlord wrote on the top of the Condition Inspection Report that "the Tenant did not show up."

The Tenant stated that his partner took pictures of the rental unit during the move-out inspection. The Tenant submitted a copy of a screen shot of the bathroom, that included a picture of the faucet. The image indicated that the picture was taken on September 30, 2018 at 18:02, the time of the move-out inspection. In the picture, the faucet had both handles. The Tenant is questioning when the Landlord took the picture of the faucet and is suspicious of the claim.

The Tenant testified that the front door lock of the rental unit was loose when they moved in and did not always latch properly. On January 21, 2018, the Tenant received a note from the management of the building that the front door had been left open and that the Tenant could be fined. The Tenant was told that the lock had to be replaced right away or that he may be responsible for any costs incurred by the Strata to replace the lock. The Tenant stated that he attempted to call the Landlord but could not contact them. The Tenant stated that he arranged a locksmith to patch the door and to address the latching issue. The Tenant stated that the Landlord compensated him for the cost of the locksmith. The Tenant does not believe that he should be held responsible for the replacement of the lock and the subsequent bill.

The Tenant stated that he denies all the Landlord's monetary claims. The Tenant does not trust the Landlord and believes that they have made up the claim in an amount to cover and keep the security deposit.

### Analysis

Firstly, I will consider whether the Landlord is authorized to apply the security deposit to a claim of damages to the rental unit. Sections 23, 24, 35 and 36 of the Act speak to the requirements for condition inspection reports and the extinguishment of rights to claim against the security deposit. Although I heard conflicting testimony regarding the specifics of the move-out condition inspection, I find that the Landlord failed to complete the condition inspection report and provide the Tenant a copy of it, in accordance with Section 36(2)(c) of the Act. Therefore, I find the Landlord has extinguished their rights to claim against the security deposit for damage to the residential property.

Residential Tenancy Policy Guideline 17 states that a Landlord who has lost the right to claim against the security deposit for damage to the rental unit retains the right to file a claim against the security deposit for any monies owing for other than damage to the rental unit and to still file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

In this case, the Landlord has applied for a monetary claim in relation to the Strata Council fine, which is not related to damages to the rental unit. Therefore, I find that, although the Landlord has extinguished their rights to claim against the security deposit for damage to the residential property, the Landlord did lawfully retain the security deposit as the Landlord applied for dispute resolution within 15 days of receiving the Tenant's forwarding address, in accordance with Section 38 of the Act. As the Landlord has lawfully retained the security deposit, I will consider the monetary claims and determine what, if any, of the security deposit should be returned to the Tenant.

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 the responsible 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 Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The Landlord has made a claim for a \$600.00 monetary loss due to the Tenant's actions and the subsequent fines from the Strata Council. I accept the Landlord's evidence that they have not paid the fine and that there may be ongoing negotiations between the Strata Council and the Landlord. In note that the Landlord has not provided an up to date balance of their statement of account to the Tenant, nor have they provided any documentation that established an outstanding balance for this hearing. As a result, I find that the Landlord has failed to provide sufficient evidence that they have incurred a monetary loss and that it was as a result of the Tenant's breach of the Tenancy Agreement or the Act. As this issue is yet to be settled through potential negotiations, I dismiss this part of the Landlord's claim with leave to reapply.

The parties provided contradictory evidence regarding the move-out inspection report and submitted photos that also presented conflicting information. In dispute resolution proceedings, a condition inspection report completed in accordance with the Regulations is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the Landlord or the Tenant has a preponderance of evidence to the contrary.

In this case, I accept the Tenant's evidence, based on a balance of probabilities, that they attended the move-out inspection with the Landlord's representative, participated in a move-out inspection and took pictures while doing so. As there are few details on the move-out inspection report and the Tenant provided pictures and testimony that was contrary to the Landlord's; I find that the Landlord has failed to provide sufficient evidence to prove that the losses in regard to the rental unit damages have been established and secondly, were as a result of the Tenant's breach of the Act or the Tenancy Agreement. I dismiss the Landlord's claims regarding the damages to the rental unit without leave to reapply.

As the Landlord's Application was unsuccessful, I decline to award the cost of the filing fee to the Landlord.

### Conclusion

I dismiss the Landlord's Application in relation to their claim for damages as a result of the Strata Council fines, in the amount of \$600.00, with leave to reapply.

I dismiss the Landlord's Application in relation to their claim for damages to the rental unit without leave to reapply.

I order the Landlord to return the Tenant's security deposit, in the amount of \$1,150.00 to the Tenant, within fifteen days of receiving this Decision. If the Landlord fails to return the security deposit within fifteen days, the Landlord may be at risk of having to pay double the amount.

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 12, 2019

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Residential Tenancy Branch