



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

FFL MNDCL-S MNDL-S

### Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to keep all or a portion of the security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenants were represented by their advocate (the "tenant").

As both parties were present service of documents was confirmed. The tenant confirmed receipt of the landlord's application for dispute resolution of October 27, 2018 and evidence. The landlord confirmed receipt of the tenant's evidentiary materials. While both parties raised questions about whether the contents of the evidence package, based on the testimonies I find that both parties were served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to hold the security deposit for this tenancy?

Is the landlord entitled to recover the filing fee from the tenants?

### Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

I find it appropriate to note that both parties chose to submit large volumes of photographs and documents in separate individual files. The files are not titled consistently titled, or uploaded in an organized or consistent manner. Both parties have uploaded a large amount of materials without concern for clarity or procedural efficiency. I note that the volume of materials submitted has no bearing on the likelihood of an application's success and parties would be well advised to consider the provision of Rules of Procedure 3.6 and 3.7 that set out that evidence must be relevant, clear, organized and legible.

The parties agreed on the following facts. The tenants began residing in the rental unit in July 2016. The landlord assumed the tenancy in August 2017 and the parties signed a new tenancy agreement at that time. A security deposit of \$500.00 and pet damage deposit of \$500.00 were paid by the tenant in July 2016 to the previous landlord and that amount was transferred to the present landlord when they assumed the tenancy in August 2017. The tenant participated in a move-in inspection with the original landlord in July 2016 and a condition inspection report was prepared at that time. The parties did not prepare a new condition inspection report in August 2017.

This tenancy ended on October 15, 2018. The parties were scheduled to perform a move-out inspection and while both parties were present the tenant did not sign a condition inspection report. The tenant submits that the landlord had completed the written inspection report without their contribution earlier than their meeting and that they were not permitted to dispute the landlord's findings during the move-out inspection. The tenant submits that they do not feel the landlord complied with the requirement to allow the tenant to participate in a move-out inspection and did not sign the report.

The landlord seeks a monetary award in the amount of \$1,909.14 for the cost of cleaning, repairs and losses incurred as a result of the tenancy. The landlord submits that the tenant caused some damage to the suite which required repairs and that there was considerable cleaning required.

The tenants agree with the landlord's claim for \$51.33 arising from repairs to a ceiling and the replacement of a light switch. The tenant disputes that the remaining amounts

claimed by the landlord are losses that arose due to any negligence or actions by the tenants.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receiving a forwarding address in writing. If that does not occur, the landlord must pay a monetary award pursuant to section 38(6) of the *Act* equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit.

In the present case the tenancy ended on October 15, 2018 and the landlord filed their application for dispute resolution on October 27, 2018. As such, I find that the landlord was within the 15 days provided under the *Act*.

Furthermore, section 35 of the *Act* sets out the requirement of the landlord to prepare a move-out condition inspection report or provide the tenant with the opportunity to participate in an inspection in accordance with the regulations.

In the present case the tenant submits that they were present for the move-out inspection but feel that the report was incorrectly prepared as the landlord had substantially filled in their findings prior to meeting. The tenant also submits that they feel the landlord treated them in a rude and condescending manner and chose not to sign the inspection report.

Based on the evidence I am satisfied that the landlord completed a condition inspection report in accordance with the *Act* and that the tenant was provided an opportunity to participate. While the tenant submits details of the landlord's conduct and attitude that they feel invalidates the condition inspection report, I find the tenant's complaints are not supported in the evidence. Even if the landlord had prepared portions of the report prior to meeting with the tenant, the evidence is that the tenant was given an opportunity to dispute the landlord's findings. While the landlord may have acted in an uninviting manner, I find that is not sufficient to find that the tenant was not provided an opportunity to participate as required under the *Act* and regulations.

While the parties signed a new tenancy agreement in 2017, I find that this was more in the nature of renewing a tenancy that had already been commenced under a different landlord in the previous year. As such, I find that there was no requirement that a

move-in inspection report be prepared at that time and the report prepared in 2016 when the tenants moved into the suite is sufficient.

Section 67 of the *Act* establishes that 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.

I am satisfied with the evidence of the landlord that they have suffered losses due to the condition of the rental suite at the end of the tenancy. I do not find the volumes of photographs submitted by both parties to be particularly relevant or indicative of the condition of the suite. However, I find it reasonable to conclude that if there were issues at the start of the tenancy that they would have been noted in the move-in inspection report. The report signed by the tenants and the previous landlord does not indicate that there were any issues with the suite as found at the end of the tenancy. It is reasonable to conclude that the damages arose as a result of the tenancy.

I am satisfied with the evidence that the total amount of the losses suffered by the landlord is \$1,909.14. I am satisfied on a balance of probabilities that the landlord has incurred damages and loss as a result of the tenancy and that the monetary value of the losses is as claimed. I am satisfied that the figures provided by the landlord are reasonable and supported in the documents where available.

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

In accordance with the offsetting provision of section 72 of the *Act*, the landlord is authorized to retain the security and pet damage deposit for this tenancy in partial satisfaction of their monetary award.

### Conclusion

I issue a monetary award in the landlord's favour in the amount of 1,009.14 in the following terms:

<b>Item</b>	<b>Amount</b>
Monetary Award Damages and Loss	\$1,909.14
Filing Fee	\$100.00
Less Security Deposit	-\$500.00
Less Pet Damage Deposit	-\$500.00
<b>Total Monetary Order</b>	<b>\$1,009.14</b>

The landlord is provided with these Orders in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 22, 2019

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Residential Tenancy Branch