



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNSD FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on March 19, 2019. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, for damage or loss under the Act; and,
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The Landlord and the Tenant both attended the hearing. All parties provided testimony. Although the Tenant stated she was served an incomplete version of the Notice of Hearing, she stated she obtained the full version of it on November 23, 2018. The Tenant also stated that she received the Landlord's evidence on March 2, 2019. The Landlord confirmed receipt of the Tenant's evidence on March 6, 2019.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to 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

- Is the Landlord entitled to a monetary order for damage to the unit or for damage or loss under the Act?

- Is the Landlord authorized to retain all or a portion of the Tenant's security and pet deposit in partial satisfaction of the monetary order requested pursuant to section 38.

### Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it was specifically pointed out by the parties and is pertinent to my findings.

Both parties agree that:

- The Tenant moved into the rental unit on February 15, 2018, and moved out on October 31, 2018.
- No move-in or move-out condition inspection, or report, was completed or attempted by the Landlord.
- The Landlord still holds \$250.00 as a security deposit
- Monthly rent was \$500.00.
- The rental unit was contained within a house that had a 2 bedroom suite upstairs, and a 2 bedroom suite downstairs.
- The Tenant rented one bedroom in the lower suite, while the other bedroom was separately rented by another individual.

The Landlord stated that when he entered the unit on November 2, 2018, after the Tenant had left, he noticed some damage. The Landlord took several photos at this time. The Landlord also took some photos in the following days to show other damages (flooring, drywall).

The Landlord is seeking \$1,966.65.00 in compensation for 4 items, as follows:

- 1) \$499.10 – Damaged Laminate Flooring

The Landlord stated that when he entered the unit on November 2, 2018, after the Tenant had left, he noticed some damaged items. The Landlord stated that when the Tenant left, she left the toilet plugged, and when he attended the unit on November 2, 2018, to fix the toilet, it overflowed, and flooded the rental unit. The Landlord stated that he had to replace some laminate flooring as a result, which cost \$499.10,

as per the receipt he provided. The Landlord stated that the toilet tank had been glued shut, and the toilet had been plugged when so it flooded dramatically when he tried to flush it and clear it.

The Tenant stated that she has no idea how the toilet got plugged, or how any of these damages occurred because it was all fine before she left at the end of October. The Tenant stated that the toilet was working fine and she should not be held responsible for the toilet overflowing after she moved out.

The Landlord stated that he returned on November 8, 2018, and took more photos of the damaged flooring, and it took him most of the month of November to fix the unit such that he could re-rent it.

2) \$237.55 – Fridge repair

The Landlord provided an estimate from a parts company which itemizes the fridge gasket that needs to be repaired. The Landlord stated that the Tenant glued the fridge shut and when he arrived on November 2, 2018, he took some photos, and ended up having to damage the gasket in order to get the fridge open.

The Tenant adamantly denies being responsible for this and says that when she left at the end of October, the fridge was fine, and it was not glued shut.

3) \$1,150.00 – November 2018 Rent

The Landlord stated that due to all the damage, including the flooring issue, he was unable to re-rent the unit until December of 2018. The Landlord stated that since the Tenant caused damage to the whole 2 bedroom suite, she should be liable for rent for the whole unit (\$1,150.00), not just her room (\$500.00).

The Tenant stated that she should not be liable for any of the lost rent, or the damages, as she denies she had anything to do with it.

4) \$80.00 – Drywall Repair

The Landlord stated that the Tenant made a hole in the drywall in the washroom, which cost \$80.00 to repair. The Landlord provided a photo, taken in November of 2018, which shows this hole.

Again, the Tenant denies she did any of this, and claims the rental unit was left in good shape when she left.

The Tenant expressed that she has had a prolonged dispute with the Landlord and his agent/brother (who lives upstairs). The parties were hostile towards each other in the hearing, and after several warnings to keep their behaviour under control, I had to place both parties on mute towards the end of the hearing. Subsequently, I explained that I had muted the parties, why I did so, and explained that the hearing would be promptly ended. I disconnected both parties nearly 55 minutes into the hearing, as I had already heard full testimony from both sides, and the hearing had degraded into a heated argument between the Landlord and the Tenant. I explained that I would proceed to make my decision based on the testimony and the evidence presented up until that point.

The Tenant also provided a few text messages between herself and the Landlord's agent and brother who lived upstairs. In these messages, the Tenant and the agent were arguing and the agent expressed that he could come down into the unit whenever he wanted. The Tenant alleges that the Landlord's agent and the Landlord have conspired against her to frame her for damages.

The Landlord stated he believes this is a ludicrous allegation, as he would never create damages that would exceed the deposit he holds.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Based on all of the above, the evidence and the testimony provided at the hearing, I find as follows:

*Condition Inspection Report*

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

In this case, I find the Landlord has failed to complete a both a move-in inspection and a move-out inspection, which is contrary to the Act. The Landlord has provided no photographic evidence and no condition inspection report showing what the condition of the rental unit was at the start of the tenancy.

With respect to the Landlord's claim for damages and loss, I find he has provided insufficient evidence to establish his claim for any of his items. I find it important to note that the burden of proof rests with the Landlord to establish his claim, and prove that the Tenant caused, and is responsible for the damage and loss. The Landlord has provided zero documentary evidence to show what the condition of the unit was at the start of the tenancy.

Further, I note the Tenant and the Landlord have had a strained and dysfunctional relationship for quite some time, including at the end of the tenancy. I note the Tenant alleges the Landlord has set this whole thing up with the help of his brother (and agent). However, I note the Tenant has little if any evidence to support that this is what happened. In any event, it appears the Landlord, his agent/brother, the Tenant and potentially a roommate (who the parties dispute was still living there at the end of the tenancy) all may have had access to the rental unit in and around the time relationships were breaking down, and damage allegedly occurred, which makes it even more difficult to know, with any degree of certainty, who caused or contributed to the issues.

Ultimately, without further proof from the Landlord, I find he has not met the burden placed on him to show that it was the Tenant who is responsible for the damage

(flooring, drywall, toilet and fridge) and subsequently the lost rent the Landlord incurred during the time where he made some repairs (November 2018).

The Landlord's application is dismissed in full, without leave to reapply. The Landlord must return the security deposit of \$250.00. I award the Tenant a monetary order for \$250.00.

### Conclusion

The Landlord's application is dismissed, in full, without leave.

The Tenant is granted a monetary order in the amount of **\$250.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: March 21, 2019

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Residential Tenancy Branch