



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LOCKE PROPERTY MGMT.  
LTD. and [tenant name suppressed to protect privacy]

## **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 retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee for this application from the tenant 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 corporate landlord was represented by its agent (the "landlord") and property manager.

As both parties were present service of documents was confirmed. The tenant confirmed receipt of the landlord's application for dispute resolution and evidence. The tenant confirmed they had not served any materials. Based on the testimonies I find that the tenant was served with the landlord's 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 retain the security deposit for this tenancy?  
Is the landlord entitled to recover the filing fee from the tenant?

### Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in April, 2015 and ended on November 30, 2018. The monthly rent was \$940.00 payable on the first of each month. A security deposit of \$470.00 was paid at the start of the tenancy and is still held by the landlord. The parties participated in a move-in inspection and prepared a condition inspection report.

The tenant did not participate in a move-out inspection. The landlord submitted evidence that they provided the tenant with the suggestion of a time and date for inspection and a second and final notice by writing of another opportunity. A copy of the notice of final inspection provided to the tenant was submitted into evidence. The tenant testified that while they received the notice from the landlord they were unable to attend the move-out inspection.

The landlord completed the move-out inspection in the absence of the tenant and completed the inspection report. A copy of the inspection report was submitted into evidence. The landlord submits that the rental unit required considerable cleaning and repairs as a result of the tenancy. The landlord testified that the work included fixing holes in the walls, touch-up painting, fixing tiles, replacing light bulbs, disposal of items left in the suite and deep cleaning. The landlord submits that they incurred costs related to the work done and the total amount of the losses is \$2,467.21. The landlord submitted receipts and invoices for some of the work performed and materials purchased.

The tenant disputes that the rental unit required such extensive work. The tenant submits that they disagree with the assessment of holes in the walls of the rental unit beyond what would be reasonable for hanging pictures. The tenant testified that when they arrived at the rental unit in the evening of November 30, 2018 intending to clean and move out the last of their materials the landlord had already completed the condition inspection report and did not provide them with an opportunity to attend to the suite.

### 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.

In the matter at hand I accept the evidence of the parties that the tenancy ended on November 30, 2018 and the landlord had been provided a forwarding address in writing prior to that date. Therefore, I find that the landlord had up to 15 days from November 30, 2018 to file their application to retain the security deposit. The landlord filed their application on December 12, 2018, within the 15 days provided under the *Act*.

Section 35 of the *Act* outlines the requirement for the landlord and tenant to inspect the condition of the rental unit at the end of the tenancy. The *Act* provides that the landlord must offer the tenant at least 2 opportunities for the inspection. Regulations 16 and 17 provide that the parties must attempt in good faith to agree on a date and time for a condition inspection. If the tenant is not available at a time proposed the landlord must propose a second opportunity to the tenant with a notice in the approved form. I accept the evidence of the parties that they were unable to agree to an initial date and that the landlord provided a second and final date in the approved form. I accept the evidence that a move out inspection was scheduled for November 30, 2018 at 1:00pm and the tenant did not attend. I find that the landlord has fulfilled their duty to offer the tenant 2 opportunities for an inspection and pursuant to section 35(5) of the *Act*, completed the report without 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 that 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 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 accept the landlord's evidence that the rental suite was in a state of disarray requiring some cleaning and repairs. While the tenant disputes the landlord's assessment of damage, I find that the condition inspection report, photographs and testimony to be sufficient to conclude that the repairs performed were necessary and reasonable under the circumstances.

The tenant submits that they were not able to complete cleaning when they arrived at the rental suite in the evening of November 30, 2018. However, as a tenant is obligated to move out by 1:00 pm on the last day of the tenancy, I find that the tenant's submission has little merit.

I accept the landlord's evidence that the cost of the various cleaning and repairs performed to the rental suite is \$2,467.21. Accordingly, I issue a monetary award in the landlord's favour in that amount as against the tenant.

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

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

### Conclusion

I issue a monetary Order in the landlord's favour in the amount of \$2,097.21, which allows the landlord to recover their damages and loss, retain the security deposit for this tenancy, and recover the filing fee

The landlord is provided with the Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with the Order, this Order 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: April 5, 2019

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Residential Tenancy Branch