



# Dispute Resolution Services

Page: 1

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:

- authorization to retain all or a portion of the security and pet damage deposit pursuant to section 38;
- a monetary award for damages and loss pursuant to section 67; 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 affirmed testimony, to make submissions and to call witnesses. The tenant was represented by counsel who made submissions on their behalf.

As both parties were present service of documents was confirmed. The tenant confirmed receipt of the landlord's application for dispute resolution of December 10, 2018 and evidence. The landlord confirmed receipt of the tenant's evidentiary materials. 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 retain the security and pet damage deposit for this tenancy?

Is the landlord entitled to recover the filing fee for their application from the tenant?

### Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, correspondence, invoices, 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.

This tenancy began on May 1, 2017 and ended on October 15, 2017 when the tenant vacated the rental unit. Monthly rent was \$900.00 payable on the first of each month. A security deposit of \$450.00 and pet damage deposit of \$450.00 were paid at the start of the tenancy and are still held by the landlord.

There have been two previous hearings regarding this tenancy under the file numbers on the first page of this decision. In the decision of June 29, 2018 the presiding arbitrator determined that the landlord was deemed served with the tenant's forwarding address as of July 1, 2018. The landlord had filed an application for authorization to retain the security and pet damage deposit on June 15, 2018. That application was heard on November 23, 2018 and a decision rendered on November 26, 2018. In the decision of November 26, 2018 another arbitrator determined that the landlord is deemed served with the tenant's forwarding address five days from the date of that decision, December 1, 2018. The landlord's application was dismissed with leave to reapply. The landlord subsequently filed the present application for authorization to retain the security and pet damage deposit on December 10, 2018.

The landlord testified that no formal condition inspection report was prepared together with the tenant at either the start or the end of the tenancy. The landlord said that a walkthrough inspection was conducted with the tenant at the start of the tenancy and the parties prepared a hand written checklist on April 27, 2018. A copy of the hand written checklist was submitted into evidence. The landlord testified that the tenant did not participate in a move out inspection and the landlord filled out the condition inspection report form on their own. Copies of the pages from the report were submitted into evidence.

The landlord submits that the tenant left the rental property in disarray requiring considerable cleaning, repairs and work to restore it to its original condition. The landlord submitted photographs of the purported damage and the receipts for the work done on the property. The landlord seeks a monetary award of \$19,927.00 for the various work done. The landlord acknowledged that the invoices submitted into evidence do not add up to this amount.

The landlord also seeks the amount of \$1,500.00 for accommodations when they attended the rental building. The landlord submits that they were unable to reside in the

rental unit and incurred costs for alternate accommodations. The landlord acknowledged that the invoices submitted do not match the figure sought.

The tenant disputes the landlord's claim for monetary award for damages and loss. The tenant acknowledges that some garbage was left on the rental property but submits that \$500.00 for the cost for disposal and cleaning is more accurate. The tenant disputes that they caused the other damage and loss sought by the landlord. The tenant further disputes that the landlord incurred costs of alternate accommodations as a result of any action or negligence on the part of the tenant.

### Analysis

The principle of *res judicata* prevents an arbitrator from making a finding in regards to an issue on which another arbitrator has already made a conclusive determination. In the hearing of June 29, 2018 the presiding arbitrator made a conclusive determination that the landlord is deemed served with the tenant's forwarding address on July 1, 2018. As such, I find that the decision of the arbitrator on November 26, 2018, to determine a date when the landlord is deemed served with the tenant's forwarding address, was in regards to a matter that had already been conclusively determined. Under the circumstances, in accordance with the finding of the arbitrator on June 29, 2018, I accept that the landlord is deemed to have received the tenant's forwarding address on July 1, 2018.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security and pet damage deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to 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 to offset damages or losses arising out of the tenancy.

Under the circumstances, I find that the landlord is deemed to have received the tenant's forwarding address on July 1, 2018. I accept the evidence that the landlord had filed an application for authorization to retain the deposits on June 15, 2018, prior to the date of deemed receipt of the forwarding address. As such, I find that the landlord was within the time limits established under the *Act* to file an application to retain the deposits for this tenancy within 15 days of the date of deemed receipt of the forwarding address.

However, section 36 of the *Act* provides that the right of a landlord to claim against a security and pet damage deposit is extinguished if they do not comply with the requirements of section 35 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

I find that the hand written checklist is no substitute for a proper condition inspection report. The hand written checklist does not set out the rental address, the service address of the landlord or the date when the tenant is entitled to possession of the rental property. I find that the preparation of a handwritten list does not satisfy the requirements for a proper condition inspection report. Consequently, I find that no condition inspection report was prepared in accordance with the *Act* and the landlord has extinguished their right to claim against the security and pet damage deposit.

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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The tenant testified that they did leave some garbage on the rental property and that a reasonable cost for cleaning is \$500.00. Accordingly, I find that the landlord is entitled to a monetary award in that amount as against the tenant.

In the absence of a proper condition inspection report prepared at the start of the tenancy I find there is insufficient evidence in support of the full amount of the landlord's claim for a monetary award. While the landlord has submitted photographs of areas of the suite showing its condition, in the absence of a proper inspection report completed by the parties delineating the condition of the suite at the start of the tenancy, I find that I am unable to conclude that the issues the landlord shows are entirely attributable to the tenant.

I note parenthetically that the evidence submitted by the landlord consists of multiple files in a variety of formats. The files are inconsistently titled and uploaded in a haphazard order. Rules of Procedure 3.7 and 3.13 provide that evidence must be

organized, clear and legible and submitted in a single package. I find that the landlord by submitting multiple individual files, named inconsistently and uploaded without organization has not met the standards set out in the Rules of Procedure.

I find that the evidence submitted by the landlord do not show that there is damage attributable to the tenant. The photographs show areas of the property which the landlord feels are of concern but they have failed to establish that the issues arise due to the tenant's actions or negligence.

Furthermore, I find that there is insufficient evidence that the invoices submitted by the landlord are for work done due to the tenancy. Even if, there was sufficient evidence to find a causal link between the tenant and damage to the rental property, I find that work such as installing new flooring, rewiring rooms, replacing speakers and doors are not reasonable costs related to restoring the property to its original condition. The description of the work shown on the invoices is more in line with an upgrade of the property and not something for which the tenant would be responsible in any event.

I also note that the invoices submitted by the landlord do not add up to the amount claimed by the landlord on their application. At the hearing, the landlord attributed any discrepancies to calculation errors. As set out above, the onus is on the applicant to establish first a causal relationship between the respondent and the losses and to verify the actual amount of the loss. I find that the landlord has not established that the amount of their monetary claim accurately reflects the losses.

I find that there is insufficient evidence that the landlord's claim for the cost of a motel stay is attributable to the tenant or reasonable under the circumstances. I find that the photographs and documentary evidence submitted by the landlord do not establish that they were required to stay in commercial accommodation.

Based on the above, I find that the landlord is entitled to a monetary award in the amount of \$500.00.

As I find that the landlord has been partially successful in their application I allow the landlord to recover \$50.00, half of the filing fee paid for this application, from the tenant.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$550.00 of the tenant's security and pet damage deposit in satisfaction of the monetary award.

The landlord must return the remaining \$350.00 of the tenant's deposits to the tenant. I issue a monetary Order in the tenant's favour for that amount.

### Conclusion

The landlord is authorized to retain \$550.00 of the tenant's security and pet damage deposit.

The balance of the landlord's application is dismissed without leave to reapply.

The tenant is provided with a monetary Order in the amount of \$350.00. The tenant is provided with the Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with the Order, the Order may be filed in the Small Claims Division of the Provincial Court and 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: April 3, 2019

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Residential Tenancy Branch