



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PROMPTON REAL ESTATE SERVICES  
INC. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on January 24, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenant as well as the Landlord's Agent M.N. attended the hearing at the appointed date and time, and provided affirmed testimony.

M.N. testified that she served the Application and documentary evidence package to the Tenant by registered mail on January 25, 2019. M.N. testified that the Landlord served additional evidence to the Tenant in person on May 1, 2019. The Tenant confirmed receipt of both packages. The Tenant testified that she served the Landlord with her documentary evidence in person on May 1, 2019. M.N. confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an 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.

Issue(s) to be Decided

1. Should the Landlord receive a Monetary Order for damages, in accordance with Section 67 of the Act?
2. Should the Landlord be authorized to apply the security deposit to the claim, in accordance with Sections 38 and 72 of the Act?
3. Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on October 1, 2017 after the Tenant signed a sublease agreement with the Landlord. The Tenant currently pays rent in the amount of \$1,231.00 on the first day of each month to the Landlord. The Tenant paid a security deposit which the Landlord continues to hold.

M.N. testified that the Landlord is seeking compensation for damage in the amount of \$1,239.00. M.N. testified that she received notification on November 2, 2018 that the sliding glass door in the Tenant's rental unit had broken. Upon further inspection, it appeared as though the interior pane of glass door had broken, while the exterior pane of glass remained intact. M.N. stated that this indicated the cause of the damage had occurred from within the rental unit.

M.N. testified that as a result, the Landlord was obligated to have the sliding glass door repaired in the amount of \$1,231.00. The Landlord submitted pictures of the broken glass door as well as a receipt for the repair in support.

In response, the Tenant testified that she was awoken at 11:50 P.M. on November 1, 2018 by a loud noise. The Tenant stated that she went out into her living room to inspect, at which point she could hear her sliding glass door cracking. The Tenant stated that there was a wind storm that evening which she attributed being the cause of the broken glass. The Tenant stated that she immediately went downstairs to notify the concierge.

The Tenant stated that she was shocked to hear from the Landlord the following day that there was a hole on the inside of the sliding glass door which she was being accused of being responsible for.

The Tenant stated that on October 30, 2018 she read a notice from management which cautioned tenants in the building about the possibility of broken glass on their patio as a result of a broken window on the 39<sup>th</sup> floor. As this was two days prior to the Tenant's glass door breaking, the Tenant suspects that it could have been caused by spontaneous glass breaking. The Tenant submitted a copy of the notice in support. M.N. stated that she had not been made aware of the details surrounding the previous broken glass incident on October 30, 2018.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or 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 what was reasonable to minimize the damage or losses that were incurred.

In this case, the parties agreed that the sliding glass door had been broken. I find that the Landlord has provided insufficient evidence to demonstrate that the broken glass was caused by the Tenant. I find it more likely that the glass broke during a wind storm

and was reported immediately to the concierge by the Tenant. I find that there is evidence that there had been a previous incident in the building just two days earlier in which another window had broken at the building. Therefore, based on a balance of probabilities, it is more likely than not that the damage to the window was not a result of the Tenant violating the *Act*, regulations, or tenancy agreement.

In light of the above, I dismiss the Landlord's claim without leave to reapply. As the Landlord was not successful with their Application, I find that the Landlord is not entitled to the return of the filing fee.

### Conclusion

I find that on a balance of probabilities that it is more likely than not that the damage to the window was not a result of the Tenant violating the *Act*, regulations, or tenancy agreement. As a result, the Landlord's Application is dismissed without leave to reapply.

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: May 14, 2019

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Residential Tenancy Branch