



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT  
                             MNDL-S, FFL

### Introduction

This hearing dealt with the adjourned cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on November 14, 2018. The Tenant applied for the return of his security deposit and the return of his filing fee. The Landlord’s Application for Dispute Resolution was made on February 8, 2019. The Landlord applied for a monetary order for losses due to the tenancy, permission to retain the security deposit and to recover their filing fee.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony 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 Tenant entitled to the return of the security deposit?
- Is the Tenant entitled to recover the cost of the filing fee?
- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

Both parties testified that the tenancy began on September 1, 2017, as a one-year fixed term tenancy. Rent in the amount of \$1,200.00 was to be paid by the first day of each month and at the outset of the tenancy, the Tenant paid a \$600.00 security deposit. The Landlord provided a copy of the tenancy agreement into documentary evidence.

Both parties agreed that the Tenant moved out of the rental unit on August 18, 2018, in accordance with the tenancy agreement. Both parties also agreed that the move-in/move-out inspections had not been completed for this tenancy.

The Landlords testified that the Tenant had returned the rental unit uncleaned and damaged at the end of the tenancy. The Landlords testified that it cost him \$110.00 to have the rental unit cleaned after the Tenant had moved out. The Landlord is requesting to recover his cleaning cost.

The Tenant agreed that they had left the rental unit unclean at the end of the tenancy and agreed the Landlord was entitled to the recovery of his \$110.00 in cleaning costs.

The Landlord testified that the Tenant had cracked the glass on the stove during the tenancy and that due to the damage caused by the Tenant, the stove was no longer safe to use. The Landlord is requesting \$626.98, at an estimated cost to replace the stove. The Landlord submitted three pictures of the damaged stove and a copy of the estimate into documentary evidence.

The Tenants testified that he had not damaged the stove during the tenancy, that the cracked glass on the stove had been there since the beginning of the tenancy.

The Landlord testified that the Tenant had caused water damage to the floors during the tenancy and that due to the damage caused by the Tenant, the floors in the rental unit had to be replaced. The Landlord is requesting \$2,420.00, at an estimated cost to replace the floors. The Landlord submitted eight pictures and two videos of the floors in the rental unit into documentary evidence.

The Tenants testified that he had not damaged the floors during the tenancy, that there is no water damage to the floors in the rental unit, they have just been installed improperly and that the damage the Landlord is claiming for had been there since the beginning of the tenancy.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the testimony of both parties that this tenancy ended, in accordance with their tenancy agreement, on August 18, 2018, the date the Tenant moved out. I also accept the testimony of both parties that the Landlord did not conduct the move-in or move-out inspection for this tenancy.

The move-in/move-out inspection is an official document that represents the condition of the rental unit at the beginning and the end of a tenancy, and it is required that this document is completed in the presence of both parties. In the absence of that document, I must rely on verbal testimony regarding the condition of the rental unit at the beginning and the end of this tenancy.

Pursuant to section 23 and 35 of the *Act*, it is the responsibility of the Landlord to ensure that the inspections for a tenancy are completed as required. I find that the Landlord was in breach of sections 23 and 35 of the *Act* by not completing the inspections as required.

The Landlord has claimed for \$626.98 in estimated replacement costs for the stove in the rental unit. In the absence of a move-in/move-out inspection, I must rely on the testimony of the parties to determine the condition of the stove in the rental unit at the beginning and end of the tenancy. In this case, I find that the parties offered conflicting verbal testimony regarding the condition of the stove at the beginning of this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I have reviewed the additional documentary evidence provided into evidence by the Landlord, and I find that there no evidence before to establish the condition of the stove at the beginning of this tenancy. Overall, I find that there is insufficient evidence before me to prove the Landlords' claim that the Tenant had damaged the stove during the tenancy. Therefore, I dismiss the Landlords' claim for the estimated replacement costs of the stove in the rental unit.

Regarding the Landlord's claim for \$2,420.00 in estimated replacement costs for the floors in the rental unit; again, in the absence of a move-in/move-out inspection, I must

rely on the testimony of the parties to determine the condition of the floors in the rental unit at the beginning and end of the tenancy. In this case, I find that the parties offered conflicting verbal testimony regarding the condition of the floors at the beginning and at the end of this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I have reviewed the additional documentary evidence provided into evidence by the Landlord, and I find that there no evidence before to establish the condition of the floors at the beginning of this tenancy. Overall, I find that there is insufficient evidence before me to prove the Landlords' claim that the Tenant had damaged the floors in the rental unit during the tenancy. Therefore, I dismiss the Landlords' claim for the estimated replacement costs of the floors in the rental unit.

As for the Landlords claim for \$110.00 in cleaning, I accept the Tenants testimony, that he agreed that he owes the Landlord the costs for cleaning at the end of the tenancy. Accordingly, I award the Landlord the requested \$110.00 in cleaning cost.

The Tenants request for the value of the security deposit to be double. Section 38(1) of the *Act* gives a landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposits or repay the security deposit and pet damage deposit to the tenant.

**Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I accept the agreed upon testimony of these parties, and find that this tenancy ended on August 18, 2018, the date the Tenant moved out of the rental unit. However, the parties to this dispute offered conflicting verbal testimony regarding whether or not the Tenant had provided his forwarding address to the Landlord. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I have carefully reviewed the documentary evidence submitted by the Tenant, and I find that the Tenant has not provided sufficient evidence to prove that he had provided his forwarding address to the Landlord as required. Therefore, I dismiss the Tenant's claim for the doubling of the security deposit for this tenancy.

Overall, I grant a Monetary Order to the Tenant for \$590.00; consisting of the return of the \$600.00 security deposit for this tenancy, the recovery of the \$100.00 filing fee for his application, less the \$110.00 awarded to the Landlord in cleaning cost.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. In this case, both the Tenant and the Landlord have requested the recovery of their respective filing fees. As the Tenant has been the successful party to these proceedings, I find that the Tenant is entitled to the recovery of his \$100.00 filing fee. I decline to return the Landlord's filing fee for his application.

### Conclusion

I find for the Tenant pursuant to sections 38 and 72 of the *Act*. I grant the Tenant a **Monetary Order** in the amount of **\$590.00**. The Tenant is provided with this 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 this Order, this 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: May 15, 2019

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Residential Tenancy Branch