



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

FFL MNRL-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 pursuant to section 38; and
- Authorization to recover the filing fee 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.

As both parties were present service of documents was confirmed. The parties testified that they were each served with the other's materials. Based on the testimonies I find that each party was served with the other'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

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced

here. The principal aspects of the landlord's claim and my findings around each are set out below.

The parties agree that this tenancy began in June 2015. A security deposit of \$600.00 was paid at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at any time for this tenancy. The tenancy ended in February, 2018. The parties agree that the tenant provided a forwarding address in writing to the landlord on or about January 31, 2019.

The landlord seeks a monetary award of \$5,124.25. The landlord submits that there was a rental arrear of \$1,280.00 at the end of the tenancy. The landlord testified that they incurred expenses for cleaning the rental unit as the tenants left the suite in a state of disarray. The landlord submitted some invoices for the work performed.

### 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. If that does not occur, the landlord must pay a monetary award pursuant to section 38(6) of the *Act* equivalent to double 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.

In the present case I accept that the tenancy ended in early February, 2018 and the tenant provided a forwarding address to the landlord on or about January 31, 2019. The landlord filed their application for dispute resolution on February 7, 2019 to retain the security deposit. I find that the landlord was within the 15 days provided under the *Act*.

The parties agree that no condition inspection report was prepared at any time for this tenancy. The tenant used a condition inspection report form to record their observations about the suite at the end of the tenancy but it was not prepared together with the landlord nor signed by the landlord.

Section 24 of the *Act* outlines the consequences to the landlord if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the evidence I find that the landlord failed to prepare a condition inspection report in accordance with the Act and has extinguished their right to claim against the deposit for damage to the property.

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 find that the landlord has provided insufficient evidence in support of their claim. While the landlord submits that the rental unit required repairs and major cleaning as a result of the tenancy, in the absence of a proper condition inspection report prepared at the start of the tenancy I find insufficient evidence to establish that the tenants are responsible for any damage. The documentary evidence submitted by the landlord consisting of some receipts, invoices and photographs are insufficient to establish that the rental unit required work as a result of the tenant's actions or negligence.

Furthermore, I find that the landlord has failed to establish that there is a rental arrear for this tenancy. The landlord gave testimony that the tenant failed to pay rent in full for February 2018 but provided insufficient evidence in support of their submission. The tenant did not confirm that they failed to pay rent, simply stating that they chose to end the tenancy. I find the landlord's evidence is insufficient to show that there is a rental arrear that gives rise to a monetary award.

As the landlord has failed to establish their claim on a balance of probabilities the landlord's application is dismissed.

I issue a monetary award in the amount of \$600.00 in the tenant's favour for the return of the security deposit for this tenancy.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

I issue a monetary order in the amount of \$600.00 in the tenant's favour against the landlord. The tenant is provided with a Monetary 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 14, 2019

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Residential Tenancy Branch