



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

FFT MNSD RPP FFL MNDL-S

### **Introduction**

This hearing dealt with applications from both the landlord and tenant pursuant to the Residential Tenancy Act.

The landlord applied 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 from the tenant pursuant to section 72.

The tenant applied for:

- A return of the security deposit for this tenancy pursuant to section 38;
- A return of personal property pursuant to section 65; and
- Authorization to recover the filing fee from the landlord 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 tenant confirmed they were served with the landlord's application and evidence. I find that the tenant was served with the landlord's materials in accordance with sections 88 and 89 of the Act.

The tenant testified that they have not served the landlord with their application.

### Preliminary Analysis – Service of Tenant’s Application

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary award:

*89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director’s orders: delivery and service of document]...*

The tenant testified that they have not served the landlord with their application. As the tenant has not served the landlord the tenant’s application is dismissed with leave to reapply.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord authorized to retain the deposit?

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 claim and my findings around each are set out below.

Both parties spent the duration of the hearing yelling accusations at one another and focused their efforts on matters which are irrelevant to the present application.

This periodic tenancy began in October 2017 and ended on November 30 2018 in accordance with a 4 Month Notice to End Tenancy for Repairs. A security deposit of \$700.00 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 tenant provided a forwarding address in writing by an email dated December 9, 2018. The tenant subsequently issued a letter dated January 10, 2019 confirming the forwarding address. The letter was sent by registered mail to the landlord.

The landlord submits that the tenant caused damage and loss by disassembling furniture and fixtures in the rental unit and failing to reassemble them when the tenancy ended. The landlord also submits that the tenant caused damage to a gate and toilet seat in the rental unit. The landlord submitted into documentary evidence correspondence between the parties and invoices for the repairs undertaken. The landlord said that the cost of reassembling the furniture is an estimate as the work has not been completed.

The tenant agreed with a deduction of \$75.00 for the cost of gate repairs but disagreed with the remaining portion of the landlord's claim. The tenant testified that they have not caused damages or loss and that the landlord was aware of all work she performed on the furniture and fixtures of 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. 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 circumstance the parties submitted evidence that this tenancy ended on November 30, 2018 and the tenant provided a forwarding address in writing by email dated December 9, 2018. In accordance with section 88 of the *Act*, email is not an acceptable means of serving a party with a document. Consequently, I find that the

email dated December 9, 2018 was not sufficient to provide the landlord with a forwarding address.

The tenant said that they subsequently issued a letter dated January 10, 2019 which was sent by registered mail on that day to the landlord. In accordance with sections 88 and 90 of the Act, I find that the landlord was deemed served with the tenant's forwarding address on January 15, 2019, five days after mailing.

The landlord filed their application for dispute resolution on January 31, 2019. I find that the landlord filed their application to retain the security deposit within 15 days of the date of deemed receipt of the forwarding address.

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.

The tenant has testified that they agreed to a payment of \$75.00 for repairs to a gate on the property. Accordingly, I find that the landlord is entitled to a monetary award in the amount of \$75.00.

I find that there is insufficient evidence in support of the full amount of the balance of the landlord's claim. The only invoices submitted by the landlord into documentary evidence are for the gate repair and some yardwork performed in April 2019. The landlord has not submitted estimates for the work they claim are required nor have they established that the work is the direct result of a violation by the tenant.

I find that there is insufficient evidence to establish that the toilet seat was damaged as a result of the tenant or that the amount now claimed by the landlord is an accurate assessment of the losses. As such I dismiss this portion of the landlord's claim.

I accept the evidence of the parties that the tenant made some alterations to the rental suite during the tenancy, and that those alterations were not reversed when the tenancy ended. While I accept the evidence that the landlord was aware of the tenant's

activities, I do not find that awareness constitutes acceptance that the tenant could leave the rental unit in an altered condition. The tenant was still required, pursuant to section 37 of the Act, to leave the rental unit in a relatively clean and undamaged condition. I find that the tenant failed to do so by leaving furniture and fixtures disassembled.

I accept the landlord's testimony that \$240.00 is a reasonable estimate of the cost of repairs. Accordingly, I issue a monetary award in that amount.

As the landlord's application was successful I allow the landlord to recover their filing fee from the tenant.

In accordance with the offsetting provisions of section 72 of the Act, I allow the landlord to deduct their monetary award from the tenant's security deposit.

### Conclusion

The tenant's application is dismissed with leave to reapply.

The landlord is authorized to deduct \$415.00 from the security deposit for this tenancy. The landlord is ordered to return the balance of the security deposit in the amount of \$285.00 to the tenant.

I issue a monetary order in the tenant's favour for the return of the security deposit in the following terms:

Item	Amount
Security Deposit	\$700.00
Less Monetary Award for Landlord	-\$315.00
Less Filing Fee for Landlord	-\$100.00
<b>TOTAL</b>	<b>\$285.00</b>

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 16, 2019

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Residential Tenancy Branch