



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding UPTOWN DEVELOPMENTS  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*;
- authorization to retain a portion of the tenants' security deposit in satisfaction of this claim pursuant to sections 38 and 67 of the *Act*; and
- recovery of the filing fee for this application from the tenants pursuant to section 72 of the *Act*.

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.

As both parties were present, service of documents was confirmed. The landlord testified that he served the tenants individually with the Notice of Dispute Resolution Proceeding Package by Canada Post registered mail on April 13, 2019, which was confirmed received by the tenants. The tenants stated that the package also included photographs of the fridge, floor and tub. Based on the undisputed testimonies of the parties, I find that the tenants were served with the notice of this hearing and the evidence referenced above in accordance with sections 88 and 89 of the *Act*.

The tenants confirmed that they did not serve any evidence on the landlord in this matter.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for compensation for damage or loss?

Is the landlord entitled to retain a portion of the security deposit in satisfaction of this loss?

Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence by the landlord, confirming that this tenancy began April 1, 2016 as a fixed-term. The tenancy ended on March 31, 2019 when the tenants vacated the rental unit.

Monthly rent, payable on the first of the month, was \$1,050.00. The tenants paid a security deposit of \$475.00 at the beginning of the tenancy, which continues to be held by the landlord.

The landlord's claim sought to withhold a portion of the security deposit for damages to replace the refrigerator handle and repair a section of the plywood subfloor.

In support of this testimony, the landlord submitted photographic evidence of the refrigerator and the floor at the end of the tenancy, a receipt for the purchase of a fridge handle, and a handwritten receipt for the labour costs.

The tenants disputed the landlord's assertions that they caused the alleged damages and claimed that the damages existed at the beginning of the tenancy. The tenants testified that they never received a written condition inspection report of the condition of the rental unit at move-in and move-out, which was confirmed by the landlord.

### Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to

the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to section 7(2) of the *Act*.

Where the claiming party has not met each of the above-noted four elements, the burden of proof has not been met and the claim fails.

Section 37(2)(a) of the *Act* provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In this case, the landlord has claimed for compensation for damages caused by the tenants beyond reasonable wear and tear.

As the onus for proving a claim for damages is on the party seeking compensation, the landlord must prove their claim on a balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

Section 21 of the Residential Tenancy Regulation sets out the evidentiary significance of the condition inspection report, as follows:

Evidentiary weight of a condition inspection report

- 21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this case, it was undisputed by both parties that the landlord failed to provide the tenants with a copy of the written condition inspection report at move in or move out. Further to this, the landlord failed to submit any evidence regarding the condition of the refrigerator handle or the floor at the beginning of the tenancy.

Based on the testimony and evidence presented, on a balance of probabilities, I find that the landlord has failed to establish the condition of the rental unit at the beginning of the tenancy in order to overcome the tenants' version of events that the damages claimed by the landlord were pre-existing to the tenancy.

Therefore, I find that the claimant has failed to establish that the damage or loss claimed stemmed directly from a contravention of the *Act* by the other party.

As such, the landlord has failed to meet the burden of proving his claim for damages. Accordingly, the landlord's claim fails and is dismissed.

As the landlord was unsuccessful in his claim, the landlord must bear the costs of the filing fee.

### **Return of Security Deposit**

The landlord continues to retain the tenants' \$475.00 security deposit. As the landlord was unsuccessful in his claim to retain the security deposit, the landlord is ordered to return the security deposit of \$475.00 to the tenants immediately as the landlord has no entitlement to the security deposit.

As an enforcement of this order, I issue a Monetary Order in the tenants' favour of \$475.00.

### **Conclusion**

The landlord's application is dismissed in its entirety without leave to reapply. The landlord must bear the costs of the filing fee.

I order the landlord to return the security deposit of \$475.00 to the tenants forthwith. As an enforcement of this order, I issue a Monetary Order to the tenants in the amount of \$475.00.

The tenants are provided with this Order in the above terms. Should the landlord fail to comply with this Order, the tenants are required to serve this Order on the landlord and this Order may be filed in the Small Claims Division of the Provincial Court, where it will be 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: July 25, 2019

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Residential Tenancy Branch