



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** FFL MNDL-S

### **Introduction**

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

- a monetary order for money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, 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 tenants confirmed receipt of the landlords' application and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with the landlords' application and evidence. The tenants did not submit any written evidence for the hearing.

### **Issue(s) to be Decided**

Are the landlords entitled to monetary compensation for losses?

Are the landlords 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 properly before me and the testimony of the parties, not all details of the respective submissions and / or

arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on May 1, 2017, and ended on January 31, 2019. The monthly rent was set at \$1,500.00, payable on the first of every month. The landlords had provided a copy of the tenancy agreement in their evidentiary materials. The tenants testified that they had paid a security and pet damage deposit totalling \$1,500.00. The landlords dispute this, and state that the tenants had only paid a security deposit in the amount of \$750.00, and a pet damage deposit in the amount of \$250.00 for a total of \$1,000.00. The tenancy agreement indicates a security deposit in the amount of \$1,000.00, and pet damage deposit in the amount of \$250.00, with a handwritten amendment of the security deposit to \$750.00, with the initials L.W. next to it. The landlords confirmed that they still hold the security deposit in their possession, in the amount of \$1,000.00. The tenants provided a forwarding address on February 4, 2019, and the landlords filed their application on February 16, 2019.

Both parties confirmed that the landlords did not perform a move-in or move-out inspection, nor were any reports completed and given to the tenants. The landlords testified that the rental unit was brand new, and provided photographs and receipts in support of their claim.

The landlords are seeking a Monetary Order for damages and losses as outlined in the table below and in the landlords' Application:

<b>Item</b>	<b>Amount</b>
Fireplace Mesh Repair	\$232.96
Cleaning Service	500.00
Replacement of light bulbs & batteries for smoke alarms	47.93
<b>Total Monetary Order Requested</b>	<b>\$780.89</b>

The landlords testified that although they did not perform the move-in and move-out inspections, the home was brand new. The landlords testified that they did not deliberately contravene the *Act* as they were not aware of their obligations to perform the inspections and complete the reports.

The tenants testified that they were unaware that the fire place mesh was damaged. The tenants further testified that they had spent several hours cleaning, and that the \$500.00 requested by the landlord to be unreasonable. The landlords testified that due

to the fact that new tenants were moving in, the landlords were under time constraints to perform a thorough cleaning, and as a result the landlords' property manager did the cleaning herself.

Lastly, the tenants dispute the claim for replacement of light bulbs as the landlords had replaced the CFL light bulbs with LED bulbs, which should be considered an upgrade. The landlords confirmed that the CFL light bulbs were indeed replaced with LED bulbs.

### **Analysis**

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 or 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. In this case, the onus is on the landlords to prove, on a balance of probabilities, that the tenants had caused damage and losses in the amounts claimed by the landlords.

Section 37(2)(a) of the *Act* stipulates 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.

Sections 23 and 35 of the *Act* require the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that "the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished", as noted in sections 24(2) and 36(2) of the *Act*. Although I acknowledge that the home was brand new, and that the landlords were not aware of their obligations, these are not considered circumstances beyond the landlords' control that would prevent the landlords from complying with their obligations under the *Act*. Although the right of the landlords to claim against the security or pet damage deposit is extinguished, the landlords may still apply for compensation under 67 of the *Act* if they meet the burden of proof to support their claim. In the absence of any move-in and move-out inspection reports, I must rely on the weight of the evidentiary materials and testimony presented by the landlords in support of the losses applied for.

The landlords had provided photographs for their claim, including a close-up photo of the damaged mesh. The landlords had also included the invoice for the mesh repair less the credit given for labour. I find that the landlords have provided sufficient evidence to support that the mesh for the fireplace was damaged. In light of the fact that the fireplace was brand new at the beginning of the tenancy, I am satisfied that this damage occurred during this tenancy, and as a result the landlords had suffered a financial loss to repair it. Furthermore, I am satisfied that the landlords had mitigated the tenants' exposure to this loss by performing the repair themselves. Accordingly, I find that the landlords are entitled to compensation for the damage to the mesh.

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. There is not specific section in the Policy Guideline for fireplace trimming. I find that the mesh could be comparable to drapery, which according to this policy has a useful life of ten years. The fireplace mesh was brand new, and therefore at the end of the tenancy the mesh had approximately 7 years and 3 months of useful life left. Accordingly, I find that the landlord is entitled to \$168.90 ( $\$232.96/120 \times 87$ ) which is the approximate prorated value of the remainder of the useful life of the fireplace mesh. On this basis, I allow the landlord's a monetary order in the amount of \$168.90 for repairs to fireplace mesh.

The landlords also made a monetary claim of \$47.93 for replacement lightbulbs and batteries. The landlords confirmed that LED light bulbs were purchased to replace the old ones. Although the landlords did provide a receipt for the purchased items, I am not satisfied that this was a financial loss due to the tenants' failure to comply with the *Act*, nor am I satisfied that the landlords had fulfilled their obligations under section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize any losses. On this basis, I dismiss this portion of the landlord's monetary claim without leave to reapply.

Lastly, the landlords are seeking reimbursement of the \$500.00 for cleaning, which was done by the landlords' property manager at \$50.00 per hour. The tenants felt that this claim was unreasonable considering the fact that they felt that they had spent a considerable amount of time cleaning the home. The landlords provided photographs to support that the tenants had failed to leave the home in reasonably clean condition. I find that the landlords had provided sufficient evidence to show that the tenants had failed to leave the rental unit in reasonably clean condition when vacating the rental unit. The tenants disputed the amount claimed, stating that they felt the amount claimed to be excessive. As the burden falls on the landlords to demonstrate their loss, and that they mitigated the tenants' exposure to this loss, I must consider whether the landlords had satisfied these two obligations. I find that that the landlords supported their loss with the receipt provided in evidence. I find that the landlords had provided a reasonable

explanation for why they did not obtain more quotations before allowing the property manager to perform the cleaning at \$50.00 per hour. I find that due to the tenants' failure to leave the rental unit in reasonably clean condition, which was the expectation of the landlords, the landlords were under time constraints to clean the rental unit in order for the new tenants to move in. I find that the landlords' decision to utilize the services of their property manager was a necessary step in order to fulfill their obligations as landlords, and mitigate or minimize the tenants' exposure to further potential losses such as loss of rental income due to the tenants' failure to comply with section 37(2)(a) of the Act. On this basis, I allow the landlords' monetary claim of \$500.00 for cleaning.

I allow the landlords' claim for recovery of the filing fee.

In accordance with the offsetting provisions of section 72 of the Act, I order the landlords to retain a portion of the tenants' security deposit in satisfaction of the monetary claim.

Although the tenants' testimony is that the security deposit and damage deposit totaled \$1,500.00, I find that the tenancy agreement submitted reflects that a security deposit of \$750.00 and pet damage deposit of \$250.00 was paid by the tenants, for a total of \$1,000.00. I find that the original security deposit was noted as \$1,000.00, and even combined with the pet damage deposit, the total would be \$1,250.00 and not \$1,500.00. Furthermore, I find that it was undisputed that monthly rent was set at \$1,500.00, and section 19 of the Act states that: (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. On a balance of probabilities, I find that the evidence presented supports the landlords' assertion that the security deposit paid was \$750.00 and not \$1,000.00. On this basis, I find that the landlords had collected a security deposit in the amount of \$750.00 and a pet damage deposit in the amount of \$250.00. Any remaining deposit, after offsetting the monetary orders granted to the landlords, will be returned to the tenants.

### **Conclusion**

I find that the landlords are entitled to recover the following monetary losses associated with this tenancy:

Item	Amount
Fireplace Mesh Repair	\$168.90

Cleaning Service	500.00
Filing Fee	100.00
Less \$1,000.00 held by landlords	-1,000.00
<b>Total Monetary Order to Tenants</b>	<b>\$231.10</b>

The remaining portion of the landlords' application is dismissed without leave to reapply.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain a portion of the tenants' security and pet damage deposits in satisfaction of the monetary claim.

The tenants are provided with a Monetary Order in the amount of \$231.10 for the return of the remaining portion of their deposits. The landlord(s) must be served with **this Order** as soon as possible. Should the landlord(s) 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: July 4, 2019

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Residential Tenancy Branch