



# 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 landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for damage to the unit, site or property pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- authorization to recover the filing fee for this application pursuant to section 72.

I kept the teleconference line open for the duration of the hearing to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code was provided to the tenant.

The landlord testified that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on April 11, 2019 and deemed received by the tenant five days later, on April 16, 2019, under section 90 of the *Act*. The landlord provided the Canada Post tracking number in support of service referenced on the first page of the decision. Based on the undisputed testimony of the landlord, I find the tenant served the tenant with the documents pursuant to section 89 of the *Act*.

### Issue(s) to be Decidedd

Is the landlord entitled to a monetary order for damage to the unit, site or property pursuant to section 67?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

### Background and Evidence

The tenancy started on March 10, 2018. The monthly rent was \$2,200.00 and the tenant paid an \$1,100.00 security deposit.

The tenant moved out on April 1, 2019. A condition inspection report was completed on move out. The tenant agreed in writing the deduction of \$100.00 which the landlord testified was for the replacement of a refrigerator handle and cleaning. The landlord still retains \$1,000.00 of the tenant's security deposit.

The landlord testified that the rental unit also had extensive damage to flooring from cigarette burns. The landlord testified that the tenant left the walk through without reaching an agreement regarding the floor damage. The tenant provided his forwarding address in writing on the condition inspection report form.

The landlord claimed damage to cigarette burn damage to flooring throughout the house including linoleum flooring, hard wood floors and carpeting. The landlord provided an email from a contractor stating the flooring could be repaired. The landlord provided replacement repair estimate of \$3,625.00.

The landlord acknowledged the flooring was old and was likely original flooring. The landlord estimated the flooring was all approximately 15 to 20 years old. The landlord claimed \$2,000.00 for floor damage to account for the pre-existing age of the flooring.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Based on the landlord's uncontroverted testimony, the condition inspection report, and the photographs provided by the landlord, I am satisfied that the tenants have damaged the flooring throughout the rental unit. I am also satisfied that the landlord has provided an estimate showing that the replacement cost of the flooring is \$3,625.00.

However, the flooring was not new. *Residential Tenancy Policy Guideline* No. 40 states that the useful life of building elements can be considered when assessing damages. Specifically, *Residential Tenancy Policy Guideline* No. 40 state:

...the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

*Residential Tenancy Policy Guideline* No. 40 states that the useful life of flooring is 10 years for carpet and tile and 20 years for hardwood floors. Based on the uncontroverted testimony of the landlord and the photographs submitted as evidence, I find that all of the flooring in the rental unit is over 20 years old. As such, the flooring has already exceeded its useful life. However, although the flooring has exceeded its useful life, the flooring could have continued to function for some future period if had not been damaged by the tenant. Based on the age of the flooring, I find that the flooring had a remaining value of 10% of the value of new flooring. Accordingly, I will award the landlord 10% of the replacement cost of the flooring, being \$362.50 (10% of \$3,625.00)

Accordingly, I authorize the landlord to retain the sum of \$362.50 from the tenant's security deposit pursuant to section 72(b).

Further, since the landlord has generally prevailed in this matter, I find that the landlord is entitled to reimbursement of the filing fee pursuant to section 72(a) and I find that this reimbursement may be deduced from the tenant's security deposit pursuant to section 72(b).

After deducting the flooring damages of \$362.50 and the \$100.0 filing fee from tenant's security deposit, the landlord still holds a balance of \$537.50 from the tenant's security deposit, as calculated below. Pursuant to section 38 of the act, the landlord is ordered to return the remaining balance of \$537.50 of the tenant's security deposit to the tenant.

<u>Item</u>	<u>Amount</u>
Security deposit held by landlord	\$1,000.00
Less: flooring damages	-\$362.50
Less: filing fee	-\$100.00
Total	\$537.50

### Conclusion

I grant the tenant a monetary order in the amount of **\$537.50**. If the landlord fails to comply with this order, the tenant may file the order in the Provincial Court to 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 15, 2019

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Residential Tenancy Branch