



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, MNDCL-S, MNDL-S, MNRL-S

### Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The tenants acknowledged receipt of the landlord's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

### *Preliminary Matter: Late Evidence Submitted by the Landlord*

The tenant provided a second set of evidence that was filed three days before the hearing. The Residential Tenancy Branch Rules of Procedure 3.14 establishes that evidence intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing. I find that the landlord was not served in accordance with the Rule of Procedure stated above and for this reason; I have not relied on this second set of evidence submitted by the landlord to form any part of my decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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 in June 2018. The monthly rent was \$4,100. The tenants paid a \$2,000.00 security deposit and a \$1,000.00 pet damage deposit.

The landlord testified that the tenant did not pay rent for January 2019. The tenants admitted that they did not pay rent because the tenants were moving out and they thought the security deposit would be applied to the last month's rent. The landlord testified that he demanded full payment of rent in January 2019.

The tenants testified that their access fobs were deactivated by the landlord on January 15, 2019. The tenants testified that they vacated the rental unit on January 18, 2019 and they mailed the keys and provided their forwarding address that day. The landlord testified that he received the keys and the tenants' forwarding address a few days later.

The landlord claimed that there were multiple broken and missing items in the rental including:

- Damaged baseboards: The landlord provided photographs of the damage and a repair quote of \$840;
- Damage sofa: The landlord provided photographs of the damage and a replacement receipt of \$999.00
- Missing coffee mug: The landlord claimed \$30.00 without providing any receipts or estimates;
- Damaged mats: The landlord claimed \$24.00 without providing any receipts or estimates; and,
- Missing keychain holder: The landlord claimed \$50.00 without providing any receipts or estimates.

The landlord also claimed \$200.00 in strata fees for moving out improperly. The landlord testified that the tenant had agreed to pay this amount to strata. The landlord admitted that the strata has not fined the landlord for the move out. However, the landlord argued that the tenant is morally obligated to pay the strata since she has told strata that she would pay it.

The landlord also claimed \$50.00 in unpaid internet charges. The tenants agreed to pay this amount.

The landlord filed this application on April 12, 2019.

### Analysis

The landlord has made a claim for compensation for unpaid rent and damages to the rental unit. I will address the landlord's claim for unpaid rent first.

#### *Unpaid Rent*

I find that the monthly rent is \$4,100.00 and the tenants have not paid the rent for January 2019. Section 71(1) of the *Act* states that "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results."

However, I find that the landlord has prevented the tenants from accessing the rental unit by deactivating the access fob on January 15, 2019 without the tenants' authorization. As such, I find that landlord is only entitled to receive rent in January 2019 for the period of January 1, 2019 to January 15, 2019. Accordingly, I find that the landlord is entitled one-half months of rent for January 2019, being \$2,050.00.

#### *Damage to Rental Unit*

Next, I will address the landlord's claim for damage to the rental unit. 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.

*i. Baseboards*

Based on the testimony of the landlord and the photograph of the landlord, I am satisfied that the tenant has damaged the baseboards in the rental unit. Further, based on the repair quote provided, I am satisfied that landlord has sustained a loss in the amount of \$840.00 for damage to the baseboards. I grant the landlord a monetary order of \$840.00 for the baseboards.

*ii. Sofa*

Based on the testimony of the landlord and the photograph of the landlord, I am satisfied that the tenant has damaged the sofa in the rental unit. Further, based on the replacement invoice provided, I am satisfied that landlord has sustained a loss in the amount of \$999.00 for damage to the sofa. I grant the landlord a monetary order of \$999.00 for the sofa.

*iii. Coffee mug:*

Based on the testimony of the landlord and the inability of the tenants to recall whether or not they kept the coffee mug, I am satisfied that the tenants have kept the landlord's coffee mug. However, the landlord did not provide estimates for this replacement of this item. In the absence of satisfactory evidence of the replacement costs, I will consider an award of nominal damages. *Residential Tenancy Policy Guideline* No. 16 defines nominal damages as:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this matter, an award of nominal damages is appropriate because the landlord has established that the coffee cup has been but the landlord has failed to provide sufficient evidence of the amount of his monetary loss. In these circumstances, I award the landlord nominal damages of \$5.00 to replace the coffee mug.

*iv. Mats*

Based on the testimony of the landlord, I am satisfied that the tenants have damaged the landlord’s mats. However, the landlord did not provide estimates for this replacement of this item. In the absence of satisfactory evidence of the replacement costs, I will consider an award of nominal damages. In these circumstances, I award the landlord nominal damages of \$10.00 to replace the mats.

*v. Keychain holder*

Based on the testimony of the landlord and the inability of the tenants to recall whether or not they kept the keychain holder, I am satisfied that the tenants have kept the landlord’s keychain holder. However, the landlord did not provide estimates for this replacement of this item. In the absence of satisfactory evidence of the replacement costs, I will consider an award of nominal damages. In these circumstances, I award the landlord nominal damages of \$10.00 to replace the keychain holder.

*Strata fees*

I find that the landlord has not provided sufficient evidence to establish that the tenants are responsible for a strata fine. The landlord admitted that strata has not assessed a fee against the rental unit. Accordingly, I find that the landlord has not established that he has incurred a compensable loss in relation to the strata fee. Accordingly, I dismiss this request.

*Internet charges*

Since the tenants have agreed to pay the internet charge, I grant by agreement the landlord’s request for \$50.00 for internet charges.

### *Filing fees*

Since the landlord has been generally successful this matter, I award the landlord \$100.00 for recovery of the filing fee pursuant to section 72 of the *Act*.

### *Security deposits*

Section 38 of the *Act* states that:

- 38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
- (a) the date the tenancy ends, and
  - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
  - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the testimony of the tenant, I find that the tenancy ended on January 18, 2019 when she mail the keys to the landlord. I also find the tenant provided her forwarding address in writing when she mailed the keys on January 18, 2010. Pursuant to section 90 of the *Act*, I find that the landlord is deemed to have received the tenants' forwarding address five days later on January 23, 2019.

The landlord had 15 days after the end of the tenancy and the delivery the tenants' forwarding address to repay the full deposit or file an application for dispute resolution pursuant to section 38(1) of the *Act*. Since the forwarding address was deemed to have been received on January 23, 2019, the landlord's to repay the deposit or file an application for dispute resolution was February 7, 2019. However, the landlord did not return the deposits and the landlord did not file this application to retain the deposits until April 12, 2019, after the expiration of the deadline set forth in section 38(1).

Further, I find that the parties did not have an agreement to apply the deposits to the unpaid rent for January 2019. The landlord sent multiple messages to the tenant specifically stating the January 2019 rent would not deducted from deposits and the

tenant still needed to pay the January 2019 rent. As such, I find that the parties did not have an agreement for the landlord to retain the deposits. Accordingly, I find that the landlord is in violation of section 38(1) of the *Act*.

According to section 38(6) of the *Act*, if a landlord does not comply with section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the deposits. Since I have determined that the landlord has violated section 38(1) of the *Act*, I find that the landlord must pay the tenant double the amount of the deposits, being \$6,000.00 (double the \$2,000.00 security deposit and the \$1,000.00 pet damage deposit)

Based on the forgoing, I find that the tenants are entitled to a monetary order on the amount of **\$1,936.00**, as calculated below.

<u>Item</u>	<u>Amount</u>
Double the security deposit and pet damage deposit	\$6,000.00
Less: unpaid rent for January 2019	\$2,050.00
Less: damages for baseboards	\$840.00
Less: damages for sofa	\$999.00
Less: damages for mug	\$5.00
Less: damages for mats	\$10.00
Less: damages for Keychain holder	\$10.00
Less: damages for Internet charges	\$50.00
Less: filing fees	\$100.00
Total owing to Tenants	<b>\$1,936.00</b>

### Conclusion

I grant the tenants a monetary order in the amount of **\$1,936.00**. If the landlord fails to comply with this order, the tenants 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 24, 2019

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Residential Tenancy Branch