



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LUNA MAINTENANCE LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL, MNDL-S, FFT, MNSD

### 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 rental unit 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 from the tenant pursuant to section 72.

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

- a refund 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 from the landlord pursuant to section 72.

The landlord attended the hearing. The landlord had full opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled starting time of the hearing for an additional ten minutes 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 it served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on March 7, 2019 which is deemed to

have been received by the tenant five days later, on March 12, 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 tenant, I find the landlord served the landlord with the documents pursuant to section 89 of the *Act*.

Furthermore, the landlord testified that it served its evidence on the tenant by registered mail. 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 landlord served the tenant with its evidence pursuant to section 88 of the *Act*.

#### Preliminary Matter – Non-Appearance of Tenant at the Hearing

The tenant did not appear at the hearing. Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.

As the tenant did not attend the hearing, and in the absence of any evidence or submissions, I order the tenant's application be dismissed in its entirety without leave to re-file.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit 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 from the tenant pursuant to section 72?

#### Background and Evidence

The landlord testified the tenant vacated the rental unit on March 6, 2019. The landlord testified that they still hold a \$1,100.00 security deposit.

The landlord testified that it tried to arrange a condition inspection report with the tenant after the end of the tenancy but the tenant refused to co-operate.

The landlord testified that the tenant left the rental unit in a damaged condition. Specifically, the landlord testified that the tenant left nails in the walls which needed to be removed, painted and patched. The landlord testified that the wall repairs cost \$180.00 and the landlord provided a receipt for this service.

The landlord also testified that the lid of the toilet was missing. The landlord testified that she was advised by her contractor that they could find a replacement lid for the toilet. The landlord testified that the toilet was unique brand and it was impossible to obtain a replacement lid. In addition, the landlord testified that there is a low shelf over the toilet which limits the size of lids. The landlord testified that the only way to fix the toilet was to replace it. The landlord testified that it cost \$577.50 to replace the toilet. The landlord provided an invoice for \$577.50 for the toilet replacement.

### 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.

Each of the landlord's claims is addressed:

*Wall repair*

I am satisfied by the landlord's uncontroverted testimony, which was corroborated by the painting invoice, that there was nail damage to the wall. I find that the amount of \$180.00 is a reasonable charge for the services of removing nails, patching holes and re-painting. Accordingly, I grant the landlord's claim for \$180.00 for wall repair.

*Toilet repair*

I am satisfied by the landlord's uncontroverted testimony, which was corroborated by a photograph showing the missing lid and by the toilet repair invoice, that toilet lid was missing. I am further satisfied by the landlord's uncontroverted testimony that the toilet lid could not be replaced. Accordingly, I find that replacement of the toilet was reasonable mitigation in the circumstances. Furthermore, I find the charge of \$577.50 for replacement of the toilet to be reasonable. Accordingly, I grant the landlord's application for \$577.50 for the repair of the toilet.

*Security deposit*

I find that the landlord holds a security deposit of \$1,100.00 and the landlord's damages herein may be deducted from the security deposit pursuant to section 72(2)(b) of the Act.

*Filing fee*

Since the landlord has been successful this matter, I award the landlord \$100.00 for reimbursement of the filing fee.

I find that the tenants are entitled to a refund of ~~\$342.50~~ \$242.50 from the security deposit as summarized below.

<u>Item</u>	<u>Amount</u>
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Security deposit held by landlord	\$1,100.00
Wall repair damages owed to landlord	-\$180.00
Toilet repair damages owed to landlord	-\$577.50
Filing fee owed to landlord	-\$100.00
Total owed to tenant	<b><del>\$343.50</del> <u>\$242.50</u></b>

### Conclusion

I grant the tenant a monetary order in the amount of **~~\$343.50~~ \$242.50**. 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.

I dismiss the tenant's application in its entirety without leave to reapply.

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: June 25, 2019

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Residential Tenancy Branch