



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding STERLING MANAGEMENT SERVICES  
LTD and [tenant name suppressed to protect privacy]

## **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 money owed or compensation for 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.

CH ("landlord") appeared as agent for the landlord in this hearing. BH appeared for the tenants. 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 tenant confirmed receipt of the landlord's application for dispute resolution hearing and evidence. In accordance with section 89 of the *Act*, I find that the tenants duly served with the landlord's application. All parties confirmed receipt of each other's evidentiary materials, and that they were ready to proceed.

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

Is the landlord entitled to monetary compensation for money owed or losses?

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

### **Background and Evidence**

This fixed term tenancy began on May 1, 2018, and ended on April 30, 2019. Monthly rent was set at \$1,595.00, payable on the first of every month. The landlord had collected a security and pet damage deposit in the amounts of \$797.50 each deposit, which the landlord still holds.

The landlord is requesting monetary compensation as follows:

Garage Remote Not Returned	\$43.68
Steam Clean Carpets (invoice in evidence)	231.00
Suite Cleaning (invoice in evidence)	204.75
Repairs & bulbs (invoice in evidence)	157.50
Supplies for repairs (invoice in evidence)	133.85
Yard Repair (invoice in evidence)	273.00
Patio Door/Screen Replacement (quotation)	445.76
Filing Fee	100.00
<b>Total Monetary Award Requested</b>	<b>\$1,589.54</b>

The landlord testified that the home was only 4 years old. The landlord testified that the tenants failed to leave the home in reasonably clean and undamaged condition.

The landlord had provided a copy of the notice of inspection for this tenancy, which was completed on April 12, 2019. The landlord submitted photos that were taken on this date to support the condition of the rental unit.

The landlord also included the move-in and move-out inspection reports, photos, invoices, estimate for replacement of the damaged screen door, and emails between the parties.

The tenants dispute the landlord's claims stating that the landlord is seeking compensation for damage that already existed at the beginning of the tenancy. The tenant testified that the yard required repairs when they had first moved in, and that was not fixed during the tenancy. The tenants also dispute that they were ever given a garage remote for this tenancy.

The tenants do not dispute that the screen on the screen door was damaged, but disputes the quote submitted as it is for the replacement and installation of the entire screen door. The tenant testified that she had contacted the company, and had obtained a much lower quote.

### **Analysis**

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the landlord must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

#### ***Liability for not complying with this Act or a tenancy agreement***

**7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party* in violation of the Act or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant followed section 7(2) of the Act by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the Act on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

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 condition except for reasonable wear and tear. I have reviewed the landlord's monetary claim for damages, and have taken in consideration of the evidentiary materials submitted by the landlord, as well as the sworn testimony of both parties.

Despite the fact that there was damage to the rental unit, the tenants dispute causing all the damage in the home. In light of the conflicting evidence provided, and taking in consideration that the party claiming the loss bears the burden of proof, I find that the landlord has not provided sufficient evidence to support that the tenants were solely responsible for the damage to the yard. On this basis, I dismiss the landlord's monetary claim for yard repairs without leave to reapply. Similarly, the tenants dispute that they were ever given a garage remote. I am not satisfied that the landlord had provided

sufficient evidence to support that the tenants had failed to return the garage remote, and on this basis, I dismiss this portion of the landlord's claim without leave to reapply.

Although I am satisfied that there is damage to the screen door, the tenant provided conflicting testimony as to whether the landlord had mitigated this loss by replacing only the damaged screen portion of the door. As the landlord had only submitted the one quotation in support of their claim, I am not satisfied that the landlord had provided sufficient evidence to support that the tenants had caused the landlord to suffer the loss as claimed. Accordingly, I dismiss this portion of the landlord's monetary claim with leave to reapply.

I find that the landlord provided sufficient evidentiary evidence to support that the tenants failed to leave the carpet and home in reasonably clean condition, and accordingly I allow the landlord a monetary claim of \$231.00 for carpet cleaning and \$204.75 for professional cleaning.

Although the home was only 4 years old, the tenant testified in the hearing that the home was damaged when she had moved in. Upon reviewing the move-in and move-out inspection reports I am not satisfied that the landlord had provided sufficient evidence to support that the tenants had caused the damage claimed during this tenancy. The landlord provided photos in their evidentiary materials, which were taken during an inspection before the tenancy had even ended. Section 37(2)(a) of the *Act* applies to the tenant's obligations of the tenant at the end of the tenancy. In light of the fact that the landlord's claims for damages are disputed by the tenants, the burden of proof is on the landlord to prove their claims. I am not satisfied that the landlord had provided sufficient evidence to support that the tenants are solely responsible for the remaining damages claimed by the landlord, and on this basis, I dismiss the landlord's monetary claims for the remaining damage without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was only partially successful in their application, I find that the landlord is entitled to recover half of the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenants' security and pet deposit of \$797.50 each deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenants' deposits in satisfaction of the monetary claim. The remaining amounts shall be returned to the tenants.

**Conclusion**

I allow the landlord's monetary claim for carpet and professional cleaning, as well as recovery of half of the filing fee. The landlord's monetary claim for the damaged screen door is dismissed with leave to reapply. The remaining portions of the landlord's monetary claim are dismissed without leave to reapply.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenants' security and pet damage deposit in satisfaction of the monetary claim. The tenants will be issued a monetary order in the amount of \$1,109.25 for the return of the remainder of their deposits.

Steam Clean Carpets (invoice in evidence)	\$231.00
Suite Cleaning (invoice in evidence)	204.75
Recovery of Half of the Filing Fee	50.00
-deposits held by landlord	-1,595.00
<b>Total Monetary Order to Tenants</b>	<b>\$1,109.25</b>

The tenants are provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord 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: August 26, 2019

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Residential Tenancy Branch