



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, MNDL-S, MNSD, FFT

### Introduction

This hearing dealt with cross-applicants pursuant to the *Residential Tenancy Act* ("Act")

The landlord applied for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain 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 its application from the tenant, pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, 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 parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue(s) to be Decided

Is the landlord entitled to retain any portion of the security deposit?

Are the landlords entitled to a monetary order as compensation for loss or damage under the Act, regulation or tenancy agreement?

Are the landlords entitled to the recovery of the filing fee from the tenant for this application?

Are the tenants entitled to the return of double their security deposit?

Are the tenants entitled to the recovery of the filing fee from the landlord for this application?

### Background and Evidence

The landlords gave the following testimony. JR testified that the tenancy began on September 1, 2018 and that the tenancy ended on June 30, 2019. The monthly rent was \$1800.00. The tenants paid a security deposit of \$900.00 which the landlord still holds and a pet deposit of \$900.00 which has already been returned. Written condition inspection reports were conducted at move in and move out.

JR testified that at the move out inspection he and MB could not agree as to the condition of the unit. JR testified that the tenants left the suite dirty and that they had painted a wall and damaged a Veneer. JR testified that a smoke detector was also missing and a light bulb required replacement. JR testified that the lawn was so long that he received a warning from the municipality about it. JR testified that the tenant built a fence at the outset of the tenancy which the landlord paid for but didn't remove it at the end of the tenancy.

The landlord is applying for the following:

1.	Cleaning	\$378.00
2.	Painting and Veneer	1125.74
3.	Smoke detector	39.04
4.	Lightbulb	5.00
5.	Lawn mowing	87.50
6.	September 2018 Rent( for fence)	286.83
7.	Filing Fee	100.00
	<b>Total</b>	<b>\$2022.71</b>

The tenants gave the following testimony. AP testified that the landlord had cleaners onsite before they had conducted the move out inspection to do a deep clean of the home. AP testified that the landlord arbitrarily decided to have them do a cleaning of the unit prior to the inspection. MB testified that the walls were already damaged and that he received permission from the landlord to paint. AP testified that the smoke detector

was left behind in the unit and that at no time did the landlord mention any issue with a lightbulb. MB testified that the landlord cut the grass ten days after they moved out and doesn't feel he should pay for that cost. MB testified that the landlord gave him permission to build a fence and that he was not told to remove it. MB testified that the landlord can enjoy the benefit of the fence.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlord's application and my findings as follows:

#### Cleaning - \$378.00

The landlords pre-emptively hired a cleaning company and had them ready to deep clean the home prior to the condition inspection report and prior to giving the tenants an opportunity to clean it to his satisfaction. Based on the above I find that the landlord took it upon his own volition to clean without allowing the tenants an opportunity to do so. In addition, the landlord did not provide sufficient evidence to show that the unit was as dirty as alleged, accordingly; I dismiss this portion of the landlords claim.

#### Painting and Veneer – \$1125.74

The landlords have not undertaken this work or incurred the expense and have only provided an estimate. In addition, the landlords have re-rented the unit and have not provided a clear and definitive timeline as to when this work will be done. I find that the

landlords have failed to satisfy all of the factors as listed above as they have not provided sufficient evidence of loss and what the exact cost will be, accordingly; I dismiss this portion of the landlords claim.

Smoke Detector - \$39.64

AP advised the landlords that the smoke detector was faulty and that it was left behind in the unit. The landlords did not dispute the tenant's testimony. In addition, the landlord is responsible for the maintenance, upkeep and replacement of smoke detectors if they are not functioning properly as per Residential Tenancy Policy Guideline 1; accordingly, I dismiss this portion of the landlord's application.

Light bulb- \$5.00

The landlords only submitted an estimate for a lightbulb but has not replaced it. Also, the landlords did not provide sufficient evidence that a lightbulb required replacement and that the tenants were responsible for it, accordingly; I dismiss this portion of the landlord's application.

Lawn Mowing - \$87.50

The landlords mowed the lawn 10 days after the tenants moved out. The landlords have failed to provide sufficient evidence as to how the tenants were responsible for this cost, accordingly; I dismiss this portion of the landlords claim.

September 2018 Rent - \$286.83

The landlords gave the tenants permission to build a fence on the property. BM testified that he asked the landlords if they wanted him to remove it at the end of the tenancy but the landlords did not provide a clear answer as to what they wanted the tenant to do. The tenant submits that the landlord was left with the benefit of the fence and at no time during the tenancy asked for the tenant to remove the fence. I find that the landlords gave the tenants permission to build the fence and agreed to the cost of that fence. The landlords have failed to show how the tenants were in breach of any section of the Act, regulation or tenancy agreement, or how they were reckless or negligent in causing them to incur this cost, accordingly; I dismiss this portion of the landlords claim.

The landlords have not been successful in their application, as a result they are not entitled to the recovery of the filing fee.

I address the tenants application and my findings as follows:

Return of Double the Security Deposit - \$1800.00

Section 38 (1) says that 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.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

As the landlords have complied with section 38(1)(c) of the Act, by filing their application one day after receiving the tenants forwarding address, the doubling provision is not applicable in these circumstances, accordingly; the tenants request for the return of double the deposit is dismissed. However, as the landlords have not been successful in their application, the tenants are entitled to the return of the original security deposit of \$900.00.

As the tenants have only been partially successful in this application, I find that they are not entitled to the recovery of the filing fee and must bear that cost.

**Conclusion**

The tenants have established a claim for \$900.00. I grant the tenants an order under section 67 for the balance due of \$900.00. This order may be filed in the Small Claims 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: October 11, 2019

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Residential Tenancy Branch