



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL-S, MNDCL-S, FFL

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for a monetary order in the amount of \$5,101.63 for damages to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to retain the tenant's security deposit for any amount owing, and to recover the cost of the filing fee.

The tenant and landlord attended the teleconference hearing and gave affirmed testimony. The hearing commenced on September 24, 2019 and was adjourned after 69 minutes. An Interim Decision was issued dated September 24, 2019, which should be read in conjunction with this decision.

The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing.

Based on the registered mail tracking information provided, I am satisfied that both parties were sufficiently served under the Act. Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party for service on the other party.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on July 1, 2018. Monthly rent during the tenancy was \$1,650.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$1,650.00, which exceeds the 50% maximum amount permitted under the Act and which I will deal with later in this decision. The landlord continues to hold the tenant's security deposit.

The landlord's monetary claim of \$5,101.63 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Damage caused by fire alarm removal	\$931.61
2. Re-painting of unit	\$1,000.00
3. Faucet replacement	\$357.52
4. 3 days of missed work	\$2,812.50
<b>5. TOTAL</b>	<b>\$5,101.63</b>

Regarding the tenant's security deposit of \$1,650.00, the landlord admitted during the hearing that they wrote the tenant a cheque for the \$1,650.00 and cancelled the cheque. As a result, the landlord has retained the tenant's full security deposit of \$1,650.00. The landlord submitted their application claiming against the tenant's security deposit on June 11, 2019. The parties agreed that the tenancy ended on January 31, 2019 when the tenant vacated the rental unit.

Regarding item 1, the landlord has claimed \$931.61 for what the landlord described as the tenant damaging the alarm panel in the rental unit. The tenant denied touching the alarm panel. The landlord confirmed that there was no incoming Condition Inspection Report (CIR) completed by the landlord. The landlord testified that there was nobody else in the rental unit other than the tenant so the damage to the alarm panel must have been caused by the tenant. The landlord stated that the fire alarm panel was hardwired into the rental unit. The landlord did not submit a photo of the panel to support the

condition at the start of the tenancy or the end of the tenancy. Regarding the cost of the alarm, the landlord referred to a statement of account from the strata counsel in the amount of \$931.61, which is blurry and appears to read "Replacement of speake". The date is too blurry to read. The only CIR submitted was for the tenancy following the tenancy before me, which I do not find to be relevant as it relates to a different tenancy. The landlord request for a witness to be called into the hearing; however, after two attempts, the witness was unable to be reached.

Regarding item 2, the landlord has claimed \$1,000.00 for the cost to repaint the rental unit. The landlord was asked how old the rental unit interior paint was and the landlord stated maybe three years old. The landlord stated the summer of 2015; however, did not have any documentary evidence such as paint receipts or other documents to support the age of the paint. Regarding the amount of \$1,000.00 the landlord submitted a message from a person who quoted \$900.00 to \$1,000.00 for repainting by email. The rental unit address is not listed on the quote and the email is dated June 8, 2019.

The landlord testified that they spent over \$1,500.00 in August 2019; however, no receipts to support their testimony were submitted in evidence. There are also no before photos of the rental unit paint for my consideration. The landlord confirmed that there was a previous tenant in the rental unit between 2015 and 2018. The tenant stated that no CIR was completed and did not agree to the painting cost.

Regarding item 3, the landlord has claimed \$357.52 to replace damaged faucets in the rental unit. The landlord referred to a Visa statement that lists Canadian Tire and various amounts; however, there are no receipts submitted to support what was purchased at Canadian Tire and if it relates to the faucets. The landlord stated that they did not have their photos in front of them as they were calling in from a client's boardroom. The tenant responded by stating that they were not aware of any faucet issues and that the landlord advised him that everything was "mint" and did not raise the issue before handing the tenant his security deposit cheque, which the landlord then cancelled before it could be cashed.

The landlord testified that they believed all the receipts are there and that they are confident in their claim. The tenant reminded the landlord that they were overcharged for their security deposit and the tenant denied damaging the rental unit.

Regarding item 4, this item was dismissed during the hearing as the landlord is claiming for days off of work and this is not a commercial tenancy, it is a residential tenancy. I find that days off of work is not recoverable under the Act and was not supported by any

documentary evidence in the amount claimed. Therefore, this item was dismissed without leave to reapply, due to insufficient evidence.

### Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Firstly, item 4 was dismissed during the hearing as I find the landlord failed to meet the burden of proof and for the reasons already stated above.

I will now deal with the security deposit. Section 19 of the Act applies and states:

#### **Limits on amount of deposits**

**19(1)** A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

Based on the above, I find the landlord breached section 19(1) of the Act by requesting 100% of the monthly rent in the amount of \$1,650.00. Therefore, **I caution** the landlord

not to breach section 19(1) of the Act in the future as the landlord is only entitled to request and accept 50% of the monthly rent for a security deposit under the Act.

Section 23 of the Act also applies and states:

**Condition inspection: start of tenancy or new pet**

**23(1)** The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

**(4) The landlord must complete a condition inspection report in accordance with the regulations.**

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

[Emphasis added]

In addition, section 35 of the Act applies and states:

**Condition inspection: end of tenancy**

**35(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit**

**(a) on or after the day the tenant ceases to occupy the rental unit, or**

**(b) on another mutually agreed day.**

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

**(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.**

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

[Emphasis added]

Based on the above, I find the landlord failed to comply with sections 23 and 35 of the Act by failing to complete an incoming or outgoing CIR. Therefore, **I caution** the landlord not to breach sections 23 and 35 of the Act in the future. As a result of the above, I find the landlord has placed themselves in a position where they are unable to support the condition of the rental unit at the start of the tenancy as I have no before photos to support the condition of the rental unit. Furthermore, I find the landlord has failed to meet all four parts of the test for damages or loss as I find the Visa statement and strata documents are insufficient to support the amounts claimed. The date on the strata document is blurry and “speake” I find is insufficient to support that the alarm panel was damaged by the tenant.

At the very least I would have expected photographic evidence of the items claimed at the start of the tenancy and actual receipts for all of the items claims. Therefore, although the landlord stated they were confident in their application, I find the application to be poorly prepared and unsupported by sufficient evidence. I do not find the Visa statement to be compelling evidence as there are no specific details which match the items being claimed.

Given the above, I find the landlord has failed to meet the burden of proof for all items. I am also not convinced on the age of the interior paint as the landlord was unable to provide a specific date or documentary evidence to support when the rental unit was last painted. Residential Tenancy Branch Policy Guideline 40 – Useful Life of Building Elements indicates that the useful life of interior paint is 4 years. Although the landlord claims the interior paint was three years old, I have do not find the landlord's testimony to be compelling and was rather vague and not supported by documentary evidence. Therefore, I find the interior paint was just as likely than not to have reached its useful life of four years and would be depreciated by 100% as a result.

As the landlord's application has failed in full, I do not grant the landlord the filing fee under the Act.

I will now address the security deposit of \$1,650.00. The tenant submitted a copy of their written forwarding address dated February 20, 2019. There is also a registered mail receipt to support the tenant's forwarding address was sent by registered mail. In fact, the address listed on the tenant's written forwarding address is the same address used by the landlord when they filed their claim several months later on June 11, 2019.

Section 38 of the Act applies and states:

**Return of security deposit and pet damage deposit**

**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.**

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
  - (b) at the end of the tenancy remains unpaid.
- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
  - (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
  - (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].**
- (6) 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.**
- (7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.
- (8) For the purposes of subsection (1) (c), the landlord must repay a deposit
  - (a) in the same way as a document may be served under section 88 (c), (d) or (f) [*service of documents*],
  - (b) by giving the deposit personally to the tenant, or
  - (c) by using any form of electronic
    - (i) payment to the tenant, or
    - (ii) transfer of funds to the tenant.

[Emphasis added]

I find the landlord extinguished their right to claim against the security deposit by failing to complete an incoming condition inspection report as indicated in section 24(2) of the Act. I also find the landlord breached section 38(1) of the Act by failing to return the



tenant's security deposit by cancelling the cheque that was provided to the tenant. Therefore, I find the landlord owes the tenant double the security deposit of \$1,650.00 in the amount of **\$3,300.00** as a penalty under the Act pursuant to section 38(6) of the Act listed above.

**Monetary Order** – I find that the landlord has established a total monetary claim of **\$0.00** as I find the landlord's claim has not merit and fails in full. I find the landlord owes the tenant **\$3,300.00** as indicated above for double the return of the tenant's security deposit, as the landlord claimed against the tenant's security deposit and the matter is before me as a result. Therefore, I grant the tenant a monetary order pursuant to section 67 of the *Act*, for the balance owing by landlord to the tenant in the amount of **\$3,300.00**.

### Conclusion

The landlord's claim fails in full and is dismissed without leave to reapply due to insufficient evidence.

The landlord has been cautioned as described above.

The landlord has established no monetary claim.

Due to the landlord's breach of the Act related to the security deposit, the tenant is granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the landlord to the tenant in the amount of \$3,300.00. The tenant must serve the monetary order on the landlord. Should the tenant require enforcement of the order the tenant may then file it in the Provincial Court (Small Claims) to be enforced as an order of that court.

This decision will be emailed to both parties. The monetary order will be emailed to the tenant only for service on the landlord.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 17, 2019

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Residential Tenancy Branch