



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S, FFL

### Introduction

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

- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Service of the landlord's notice of application for dispute resolution and evidence package were confirmed by the tenant, in accordance with sections 88 and 89 of the *Act*. Service of the tenant's evidence package was confirmed by the landlord, in accordance with section 88 of the *Act*.

### Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2018 and ended by way of a Residential Tenancy Branch settlement agreement on March 31, 2019. The filing number for the previous hearing is located on the cover page of this decision. Monthly rent in the amount of \$700.00 was payable on the first day of each month. A security deposit of \$350.00 was paid by the Ministry on the tenant's behalf to the landlord. The landlord retained the tenant's security deposit at the end of the tenancy. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agreed to the following facts. The subject rental property is a basement suite in a house. The landlord lives in the upper portion of the house and rents out five rooms to different tenants in the basement, each with their own tenancy agreement.

The landlord testified that she did not ask the tenant to complete a move in or move out condition inspection report and that she did not complete a move in or move out condition inspection report.

The tenant testified that an outreach worker texted the landlord with his forwarding address in April of 2019, but the landlord did not respond. The tenant testified that he did not have proof of the April 2019 text message. The landlord testified that she did not receive the tenant's forwarding address via text in April of 2019. The tenant testified that in September of 2019 he sent the landlord his forwarding address in writing via registered mail. The landlord testified that she received the tenant's forwarding address on September 9, 2019 via registered mail. The landlord filed her application to retain the tenant's security deposit on September 19, 2019.

The landlord testified that she is seeking the following damages arising out of this tenancy:

Item	Amount
Plumbing and electrical repairs	\$980.00
Lock replacement	\$86.21
Gutter replacement	\$63.62
ICBC deductible	\$300.00

Window replacement	\$2,898.00
Filing fee from previous hearing	\$100.00
Filing fee for this hearing	\$100.00
<b>Total</b>	<b>\$4,527.83</b>

The tenant testified that the subject rental property is a slum and all the damages claimed by the landlord were there before he moved in.

#### Plumbing and electrical repairs

The landlord testified to the following facts. The tenant drained the hot water tank without permission and so the hot water tank needed to be serviced by her plumber who is also her electrician. The tenant repeatedly turned the power off and on, so the electrical panel needed to be serviced. The tenant glued all of the light switches so that the switches could not turn the lights on or off. The tenant cut wires and hoses in the furnace which then required repair. The tenant abused the washing machine and dryer by leaving them running empty 24/7. The washing machine was not working at the end of the tenancy and required repair. The tenant damaged lights at the subject rental property which required repair.

The landlord entered into evidence five cheques she wrote to her electrician/plumber to fix the above listed damages. The cheques are made out to an individual. No bills/receipts/invoices or estimates for the above listed work were entered into evidence. Photographs showing damage to the subject rental property were entered into evidence. No evidence as to the pre-tenancy state of the subject rental property was entered into evidence.

The tenant denied all of the landlord's testimony and testified that he did not damage or abuse any of the landlord's property. The tenant testified that he lives with four other people, and that it could have been any of them who damaged the landlord's property, but it was not him. The tenant testified that he did not do laundry at the subject rental property because the laundry door was always locked, and the washing machine was old and often not working.

#### Lock replacement

The landlord testified that the tenant put glue in the bedroom door lock of one of the other tenants and the laundry room door and so the locks required replacement. A receipt in the amount of \$86.21 was entered into evidence.

The tenant testified that he did not damage either lock.

#### Gutter replacement

The landlord testified that the tenant pulled one of the gutters off of the house which required replacement. A receipt in the amount of \$63.62 was entered into evidence.

The tenant testified that he did not damage the gutter.

#### ICBC deductible

The landlord testified that her car was vandalized and that the tenant did it. The landlord testified that the tenant was hanging around her car port and that while she did not see him do it, she believed it was him. The landlord testified that she called the police and filed a claim with ICBC and had to pay a deductible in the amount of \$300.00 to have her car fixed. A receipt for \$300.00 was entered into evidence. The police file number was entered into evidence. The landlord testified that the police attended and arrested the tenant. A police report was not entered into evidence.

The tenant testified that he did not vandalize the landlord's car and that the police arrested him because he had an outstanding warrant for his arrest, not for vandalizing the landlord's car. The tenant testified that no charges have been laid against him for vandalizing the landlord's car.

#### Window replacement

The landlord testified that the toilet seat from the basement suite was used to break her dining room window and that she believes it was the tenant as none of the other basement tenants caused trouble. A receipt in the amount of \$2,898.00 was entered into evidence.

The tenant testified that he did not break the window.

### Filing Fees

The landlord testified that in the previous dispute in which the parties came to a settlement agreement, she requested the return of her filing fee which was not awarded by the previous arbitrator.

The settlement decision, drafted by a different Arbitrator states:

After considerable discussion the Landlord and the Tenant mutually agreed to resolve all issues in dispute at these proceedings under the following terms:

- the tenancy will end, by mutual agreement, on March 31, 2019;
- the Tenant will not turn off the power or drain the hot water tank for the duration of the tenancy; and
- both parties will treat the other party with respect for the duration of the tenancy.

The landlord is seeking to recover her filing fee for this hearing in addition to the filing fee from the previous hearing.

### Analysis

Section 7 of the Act states that 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.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the landlord must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the landlord's claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

#### Plumbing and electrical repairs

The evidence of the parties regarding plumbing and electrical damages at the subject rental property is conflicting. The landlord alleges that the tenant damaged the subject rental property, and the tenant denies that he damaged the subject rental property. The landlord entered into evidence photographs of damages but did not enter into evidence any photographs or condition inspection reports which show the condition of the subject rental property at the beginning of the tenancy. Even if the landlord proved the move in condition of the subject rental property, the landlord has not entered any evidence which proves, on a balance of probabilities, that it was the tenant, and not one of the other tenants or their guests who damaged the subject rental property. Conjecture and belief are not enough for the landlord to be successful in her claim. I therefore dismiss the landlord's claim for plumbing and electrical repairs.

I also find that the cheques made out to an individual do not prove that the cheques were used to pay an electrician or plumber as no bills/receipts/invoices or estimates were entered into evidence. I find that the landlord has failed to prove the value of the alleged damages. On this ground, I also dismiss the landlord's claim for plumbing and electrical repairs.

#### Lock replacement

I find that the testimony of the parties regarding the damage to the locks is conflicting. I find that the landlord did not enter any evidence proving that the tenant or a person permitted on the property by the tenant, damaged the locks. I find that the landlord has not proved that the locks were in good working order at the beginning of this tenancy. Based on the above, I dismiss the landlord's claim.

#### Gutter replacement

I find that the testimony of the parties regarding the damage to the gutter is conflicting. I find that the landlord did not enter any evidence proving that the tenant or a person permitted on the property by the tenant, damaged the gutter. I find that the landlord has not proved that the gutters were in good working order at the beginning of this tenancy. Based on the above, I dismiss the landlord's claim.

#### ICBC deductible

I find that the testimony of the parties regarding the damage to the landlord's car is conflicting. I find that the landlord has not proved the tenant damaged it. I therefore dismiss the landlord's claim.

#### Window replacement

I find that the testimony of the parties regarding the damage to the window is conflicting. I find that the landlord has not proved the tenant damaged it. I therefore dismiss the landlord's claim.

#### Filing Fees

In the previous hearing, the landlord applied for an early end to tenancy and to recover her filing fee. The settlement decision, drafted by a different Arbitrator states:

After considerable discussion the Landlord and the Tenant mutually agreed to resolve all issues in dispute at these proceedings under the following terms:

- the tenancy will end, by mutual agreement, on March 31, 2019;

- the Tenant will not turn off the power or drain the hot water tank for the duration of the tenancy; and
- both parties will treat the other party with respect for the duration of the tenancy.

The decision states that all issues in the previous dispute were settled on the listed terms. The settlement agreed does not contain a term awarding the landlord the \$100.00 filing fee. Therefore, the landlord is not entitled to seek recovery of the \$100.00 filing fee from the previous hearing as her claim for the filing fee in the previous hearing was settled.

As the landlord was not successful in the present application for dispute resolution, I find that she is not entitled to recover the \$100.00 filing fee from the tenant for this application, in accordance with section 72 of the *Act*.

### Security Deposit

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 24(2) of the *Act* states that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not offer the tenant two opportunities to complete the condition inspection. Pursuant to section 17 of the *Residential Tenancy Act Regulations* (the "Regulations"), the second opportunity must be in writing.

The landlord testified that no joint move-in condition inspection was conducted and that no move in condition inspection report was completed. The landlord also testified that she did not provide the tenants with two opportunities to complete the move in inspection with the last opportunity provided in writing. Responsibility for completing the move in inspection report rests with the landlord. I find that the landlord did not complete the condition inspection and inspection report in accordance with the Regulations, contrary to section 24 of the *Act*.



Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-in inspection and inspection report, I find that the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy is extinguished.

As I have determined that the landlord is ineligible to claim against the security deposit, pursuant to section 24 of the *Act*, I find that I do not need to consider the effect of the landlord failing to provide two opportunities, the last in writing, to complete the move out inspection and failing to complete the move out inspection report.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

Section C(3) of Policy Guideline 17 states that unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the *Act*.

In this case, while the landlord made an application to retain the tenant's security deposit within 15 days of receiving the tenant's forwarding address in writing, she is not entitled to claim against it due to the extinguishment provisions in section 24 of the *Act*. Therefore, the tenant is entitled to receive double his security deposit in the amount of \$700.00.

### Conclusion

I issue a Monetary Order to the tenant in the amount of \$700.00.

The tenant is provided with this Order in the above terms and the landlord must be served with 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: January 20, 2020

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Residential Tenancy Branch