



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Lighthouse Realty Ltd and  
[tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **MNDL-S, FFL**

### **Introduction**

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

- a monetary order for unpaid rent, loss and damages pursuant to section 67;
- authorization to retain the security deposit for this tenancy pursuant to section 38;  
and
- recovery of the filing fees from the tenants pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlords were represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they had served the tenant with their application for dispute resolution and evidence by registered mail sent October 24, 2019 to a forwarding address providing by the tenant. The landlord gave a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on October 29, 2019, five days after mailing in accordance with sections 88, 89 and 90 of the Act.

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

Are the landlords entitled to a monetary award as claimed?  
Are the landlords entitled to retain the deposit for this tenancy?  
Are the landlords entitled to recover the filing fee from the tenant?

### Background and Evidence

This periodic tenancy began in September 2009 and ended September 30, 2019. A security deposit of \$362.50 was collected at the start of the tenancy and is still held by the landlord. A condition inspection report was prepared at the outset of the tenancy but a move-out inspection was not done.

The landlord submits that the rental unit required some cleaning and repairs after the tenant had vacated. The landlord submitted into evidence photographs of the suite and receipts for work performed. The landlord says that among the work performed was painting the walls, cleaning and garbage removal and changing the locks. The landlord seeks a monetary award of \$698.73 for the work done.

### Analysis

Section 36 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 35 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

In the present case while the landlord said that the tenant vacated the rental unit without allowing for a move-out inspection to be scheduled, I find little documentary evidence to show that the landlord made any efforts to schedule a move-out inspection. The landlord did not provide any correspondence or notice issued to the tenant to attempt to schedule a move-out inspection as required under the *Act* and regulations. Based on the evidence I find that the landlord did not comply with the *Act* by offering the tenant at least 2 opportunities and have thus extinguished their right to claim against the security deposit for this tenancy.

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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In the case at hand, as this was a long-term tenancy I find that much of the items claimed by the landlord to be beyond the expected useful life of items as delineated in Residential Tenancy Policy Guideline 40. Interior walls are estimated to require repainting after 4 years and I therefore find that the need for painting is not attributable to the tenant but would have been required in any event due to the passage of time.

Similarly, I find that much of the items claimed by the landlord to simply be the expected result of ordinary usage and wear and tear rather than due to any negligence or breach on the part of the tenant. I find that the landlord has not shown on a balance of probabilities that there was a need to replace the locks and mailboxes for this tenancy. I find that the photographic evidence submitted by the landlord does not show that there has been a breach by the tenant that would give rise to a monetary claim. Taken in its entirety I find that the landlord has not met their evidentiary onus to establish that the amount they claim arises from a negligent act or breach on the part of the tenant and therefore I dismiss the landlord's application.

### Conclusion

The landlord's application is dismissed 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: March 6, 2020

---

Residential Tenancy Branch