



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### **Introduction**

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of 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 this application from the tenant pursuant to section 72.

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

As both parties were present service of documents was confirmed. The parties each testified that they had been served with the respective materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

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

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to retain all or a portion of the security deposit for this tenancy?

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

### Background and Evidence

This periodic tenancy began October 1, 2016 and ended September 2019. A security deposit of \$425.00 was paid at the start of the tenancy and is still held by the landlord. The parties prepared a condition inspection report at the time of moving in as well as at the end of the tenancy.

The move-out condition inspection report was completed on either October 2, 2019 or October 5, 2019. The parties disagree on what date the inspection occurred. A copy of the report was submitted into evidence. The report is signed by both parties and does not indicate any issues with the condition of the suite or that any amount of the deposit will be deducted. The tenant provided their forwarding address on the report.

The landlord submits that they signed the move-out inspection report under duress. The landlord explained that they were suffering from injuries and were suffering effects from reducing the dosage of their prescription medication. The landlord said that they conducted the inspection together with the tenant to accommodate their schedule and while they signed the report indicating no damage to the rental suite, they did not properly inspect the suite.

The landlord says that after the condition inspection report was completed and when they were feeling better they returned to the rental suite and found damage in the bathroom area, specifically the countertop requiring repairs. The landlord submitted photographs and video recordings of the suite as evidence of the damage. The landlord submits that the cost of repairs, cleaning and work done to the rental unit is \$966.00 and seeks a monetary award in that amount.

The landlord filed their application on October 17, 2019. Among the evidence the landlord submitted include written submissions as well as the signed condition inspection report and photographs and video of the suite.

The tenant disputes that there was any damage beyond what is recorded in the signed condition inspection report. The tenant says that they did not give authorization that the landlord may retain any portion of the deposit for this tenancy.

### Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must 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 tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

The landlords have filed the present application on October 17, 2019. The parties gave conflicting evidence on whether the tenants provided a forwarding address in writing on October 2, 2019 or October 5, 2019. In either event I find that the landlords filed the application to retain the security deposit within the 15 days provided under the *Act*.

Pursuant to section 21 of the Residential Tenancy Regulations a condition inspection report is evidence of the state of repair and condition of the rental suite unless there is a preponderance of evidence to the contrary.

The landlord repeatedly claimed that they signed the original condition inspection under duress. Duress is a situation wherein a party is made to do something against their will through threats, constraints or coercion. I find that there is little evidence that the tenant exerted and coercion or pressure to force the landlord to complete the condition inspection report. Based on the evidence it appears that the tenant simply wanted to complete the inspection and report in a reasonable timeframe.

I do not find the landlord's submission that they were under duress to be supported in the evidence. Even if the landlord was recovering from injuries or taking prescription medication, submissions that are not strongly supported in the documentary materials, I find little evidence that the landlord was made to perform the move-out inspection against their will. It was certainly open for the landlord to appoint an agent to participate in a move out inspection in their stead. The landlord chose not to do so and performed the inspection. I find the landlord's submission that the signatures on the condition inspection report is evidence of the duress they suffered to be at all reasonable. The

landlord's signature is placed on the prescribed line of the report and appears to be the same as that provided at the start of the tenancy. I find the landlord's pointing to the differences in the strokes or the shape of some of the letters of the name to be trivial differences to be expected in two signatures provided years apart.

I find that the video and photographic evidence to be insufficient to demonstrate that there was significant damage to the rental unit. The images provided show minor blemishes which are no more than what would have been expected from an ordinary tenancy. I find that the evidence now submitted by the landlord to fall short of being a preponderance and therefore find that the condition inspection report, completed and signed by the parties to be an accurate assessment of the state of the suite.

I find that the landlord has not met their evidentiary onus to establish that they have incurred damages or loss as a result of the tenant. The condition inspection report completed by the parties establish that no damage was found at the time of move-out. The tenant cannot be held responsible for work subsequently performed by the landlord. Consequently, I dismiss the landlord's claim.

I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlords' failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a return of the \$425.00 security deposit for this tenancy and issue a monetary order in that amount. No interest is payable over this period.

### Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$425.00. The landlords must be served with this Order as soon as possible. Should the landlords 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: March 13, 2020