



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL -S, FFL

### Introduction

This hearing dealt with a landlord's application for compensation for damage to the rental unit and authorization to retain the tenant's security deposit. The landlord appeared at the hearing; however, there was no appearance on part of the tenants.

The landlord submitted two registered mail receipts and a copy of the move-out inspection report as proof the hearing documents were sent to the tenants via registered mail at their forwarding address on November 11, 2019 and November 12, 2019. Both of the registered mail packages were returned due to an "incomplete address". The landlord confirmed that the registered mail envelopes were addressed using the forwarding address as it was given to her by the tenants.

Section 89(1) provides that when a landlord makes an Application for Dispute Resolution against a tenant, the landlord may serve the documents to the tenant via registered mail using the tenant's forwarding address.

I was satisfied the landlord sent the tenants notification of this proceeding in manner that complies with the Act and I continued to hear from the landlord without the tenants present.

During the hearing, the landlord stated that she would be satisfied to retain the tenant's security deposit in satisfaction of her claims. I have limited the landlord's claim accordingly.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation equivalent or greater than the tenant's security deposit?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The tenants took possession of the rental unit on October 29, 2018 and the landlord collected a security deposit of \$1150.00. The tenants moved out of the rental unit on October 30, 2019.

The landlord prepared a move-in inspection report with the tenants on October 28, 2018 and move-out inspection report on October 31, 2019. The tenants agreed with the landlord's assessment of the condition of the property, including damage to the cabinets, and provided their forwarding address on the move-out inspection report.

The tenants sought the opportunity to remedy the damage and had a relative attempt to make the repairs; however, the landlord found the repair efforts inadequate and communicated with the tenants. The tenants recommended a certain contractor to the landlord, which the landlord contacted and had a quote prepared. The contractor's quote to repair the cabinets was \$1,300.00.

The landlord contacted the tenants via email on November 2, 2019 and proposed that they authorize her to retain their \$1100.00 security deposit in satisfaction of the damage and the landlord would absorb the balance of the cost to rectify the damage. The tenant responded indicating he agreed with the landlord's proposal. The landlord then responded on November 3, 2019 to correct that she was holding a \$1150.00 security deposit but that she would honour her original proposal and keep only \$1100.00 of the security deposit and refund \$50.00 to the tenant and she asked the tenants to sign off on that agreement on the condition inspection report; however, the tenants ceased further communication with the landlord.

The landlord proceeded to file this Application for Dispute Resolution since she did not have the tenant's signature authorizing the landlord to retain \$1100.00 of their security deposit as she is required to have under the Act.

As evidence for this proceeding, the landlord provided a copy of the condition inspection report, several photographs, emails exchanged with the tenant, and registered mail receipts.

### Analysis

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant, or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

Upon review of the unopposed evidence before me, I accept that the cabinets were damaged during the tenancy, the tenants' efforts to rectify the damage was inadequate, and the estimate to repair the damage was \$1,300.00. It is also apparent to me that the tenants were agreeable to the landlord retaining their security deposit to rectify the damage by way of an email but that they did not provide the landlord with written authorization that included a signature as the landlord requested and as required so as to comply with her obligations under the Act. As such, I find the landlord's decision to file this Application for Dispute Resolution to obtain authorization from an Arbitrator was the correct course of action that further cost her a \$100.00 filing fee.

In light of the above, I am satisfied the landlord is entitled to compensation by an amount that is equivalent or greater than the tenants' deposit and I authorize the landlord to retain the tenant's entire security deposit in satisfaction of any and all losses associated to this tenancy as she requested.

### Conclusion

The landlord is authorized to retain the tenants' entire security deposit in satisfaction of the landlord's damages and losses.

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 26, 2020

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Residential Tenancy Branch