



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL-S, FFL

### Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on February 14, 2020 seeking an order to apply a portion of the tenant’s paid security deposit to damage in the building. The landlord also applied to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on March 23, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The tenant and landlord each attended the hearing, and I provided each with the opportunity to present oral testimony. In the hearing, the tenant confirmed they received the notice of the hearing and the landlord’s evidence package via post. The landlord confirmed receipt of the tenant’s evidence via the Residential Tenancy Branch.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for Damage or Compensation, applying the security deposit to the claim, pursuant to section 37 and 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

### Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord applied for a monetary order for \$391.95 in damages that occurred on January 31, 2020. This is for work completed by an elevator technician firm called to re-

start the building's stalled elevator. According to the landlord, the elevator stoppage was caused by the tenant moving their belongings out, blocking the door with baggage and thus stalling the operation of the elevator. The building manager provided two pictures clipped from video in an email, noting "Five minutes of blockage is certainly enough for the elevator to detect a problem with the door." This purportedly is the reason for having the elevator reserved in "lock off" during tenants' reserved move out times.

Move outs from the building occur by appointment, with the tenant in this situation reserving the time for use of the elevator from 10 a.m. to 12 p.m. The tenant asked to re-schedule the walk-through inspection meeting from 1 p.m. to 5 p.m., and then to 6 p.m. By this time, the tenant still had items in the unit.

The landlord applies for an order authorizing the withholding of the amount from the tenant's security deposit.

The landlord spoke to the terms of the tenancy agreement, referring to the document submitted as evidence. The tenancy began on September 1, 2019, with the rent amount of \$1,950.00 payable on the 1<sup>st</sup> of each month. There was a payment of a security deposit in the amount of \$975.00.

The parties completed a Mutual Agreement to End Tenancy on January 13, 2020, with tenant agreeing to vacate the unit by 1 p.m. on January 31, 2020.

The tenant and landlord completed a Condition Inspection Report on January 31, 2020, with both parties signing. The tenant provided a forwarding address on this document. A notation on the document reads, to indicate no damage to the unit: "None. Security will be returned by mail cheque on Feb 3, 2020."

The landlord gave testimony that they initially stated a return date of February 3. The building manager then advised of the repair cost on February 11. They had sent a cheque on February 12 with the amount for elevator repair deducted. After consulting with the Residential Tenancy Branch, they withdrew that cheque upon finding out that the full amount of the security deposit must be tendered. The landlord then applied for this hearing in order to claim the security deposit amount deducted for the repair.

The tenant evidence is that the landlord did not return the security deposit. Emails to and from the landlord on February 4 and February 11 outline the disagreement on the elevator damage. The landlord refers to video footage (from which the two screenshots are captured) though did not provide the footage to the tenant on their request. This footage was not submitted by the landlord for this hearing. The tenant also asked for return of the security deposit on February 11, referring to the February 3 deposit return date, as well as the relevant portion of the *Act*.

The tenant gave oral testimony on the events after the condition inspection meeting. They proceeded to move out remaining belongings, then needing a fob to take the elevator down to the landlord's floor. Upon seeing the state of the stopped elevator, the landlord accused them of breaking the door. The tenant stated that the elevator "gets fixed nearly every week" and that they asked the building manager for the video that purportedly shows how the elevator stoppage occurred. They reiterated that they did not receive any amount of the security deposit back from the landlord to date.

### Analysis

The relevant portion of the *Act* regarding the return of the security deposit is section 38:

- (1) . . .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. . .any security deposit. . .to the tenant. . .;
  - (d) make an application for dispute resolution claiming against the security deposit. . .

Subsection 4 sets out that the landlord may retain an amount from the security deposit with either the tenant's written agreement, or by a monetary order of this office.

In this hearing, I find the landlord properly applied for dispute resolution within the 15 days set out in the *Act*. The issue then is the assignment of responsibility, if at all present, for the stoppage of the elevator necessitating repair.

I find the tenant is not responsible for the elevator stoppage; therefore, the landlord is not entitled to an order for the repair amount deducted from the security deposit.

The Condition Inspection Report was completed with the tenant and landlord signing it on January 31, 2020. The tenant gave testimony that the landlord attributed the stopped elevator to the tenant at that time; however, there is no evidence the landlord attempted to amend the report or subsequently try to bring it to the tenant's attention. The stoppage to the elevator falls outside the ambit of the condition inspection report. The condition inspection report was completed prior; therefore, the landlord has no route to make a claim against the report in this fashion.

Regarding the tenant's liability for the elevator damage, I find the evidence does not weigh in favour of the landlord's claim. I find the two photos provided by the property manager do not depict a blockage of the door operation by the tenant using their bag. The photos are captured from a video – this was not provided to the tenant on their request and was not provided as part of the landlord's evidence for this hearing. The landlord placed more emphasis on this video showing how the stoppage occurred, yet it was not provided.

Further, the tenant stated that the elevator “gets fixed nearly every week” – this point was not addressed by the landlord in the hearing and there is no evidence that the elevator was in good repair following a maintenance schedule. As a result, I find the landlord has failed to establish that the cause for the repair was a result of any actions taken by the tenant.

For these reasons, I dismiss the landlord’s claim for a monetary order for compensation.

As the landlord was not successful in this application, I find they are not entitled to recover the filing fee paid for this application.

### Conclusion

I dismiss the landlord’s application for compensation, without leave to reapply.

I order the landlord to pay the tenant the amount of \$975.00. This is the amount of the security deposit. I grant the tenants a monetary order for this amount. This monetary order may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: April 7, 2020

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Residential Tenancy Branch