



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND-S, MNDC-S, FF

### Introduction

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

- a monetary order for money owed or 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;
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

The landlord attended the hearing via conference call and provided undisputed testimony. The tenants did not attend or submit any documentary evidence. The landlord stated that the tenants were each served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on November 15, 2019 and has submitted copies of the Canada Post Customer Receipt and tracking labels. The landlord stated that the package for the tenant, C.U. was returned from Canada Post as "unclaimed". I accept the undisputed affirmed testimony of the landlord and find that the tenants were properly served as per sections 88 and 89 of the Act.

Extensive discussions were made in which the landlord had stated that an amendment to the application for dispute increasing the monetary claim was filed. A review of all documents and evidence submitted on file revealed no amendment to the application increasing the monetary claim. The landlord stated she was told by an information officer at the Residential Tenancy Branch that an amendment was not required and that she did not serve the amendment application to the tenants.

Residential Tenancy Branch, Rules of Procedure, Rule 4, Amending an Application for Dispute Resolution was explained in detail to the landlord. The landlord claims that an amendment to an Application for Dispute increasing the monetary claim was filed. An extensive search was made through the Residential Tenancy Branch File, but no amendment was found. The landlord stated that she did not serve the amendment to the tenants. As the amendment could not be found and the landlord failed to serve the tenants with the amendment, I find that the landlord is limited to the original monetary claim of \$3,387.00.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation, for damage and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord provided evidence that this tenancy began on August 1, 2019 on a month-to-month basis in which the monthly rent was \$1,350.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$675.00 was paid.

During the hearing the landlord amended her claim by withdrawing her claim for replacement of a broken bedroom door and closet doors.

The landlord now seeks an amended and clarified monetary claim of \$1,953.00 based upon the submitted photograph of a spreadsheet which consists of:

\$509.00	Drywall Repairs
\$1,344.00	Dented Fridge
\$100.00	Carpet Cleaning

The landlord provided undisputed affirmed testimony that the tenants vacated the rental unit leaving it dirty and damaged. The landlord claims that the tenants caused damaged to the drywall which required repairs. The landlord also seeks recovery of the

full cost of replacing the dented fridge at \$1,344.00, although it was not replaced. The landlord relies upon a screenshot of an online ad of a similar fridge for \$1,099.00 (plus \$120.00 for delivery and \$132.00 in combined taxes). The landlord also seeks \$100.00 for carpet cleaning as the tenants left the carpets stained.

The landlord stated that the drywall repair and carpet cleaning was done by Maids4u Home Services as per the submitted invoice dated January 19, 2020. A review of the invoice under scope of work states:

*Deep Detail Move Out Cleaning including Balcony and Storage (January 7, 2020)  
Detail Junk Removal including storage (3 loads)  
Including: Kitchen (all appliances, counters, cub-boards in/out/ behind  
appliances/ sink/etc/all common areas/ all floors/ some walls & windows/ window  
seals/all doors, frames & trims/ all living areas/baseboards/main entrance/  
dusting through-out/ light fixtures/ bathroom, etc  
Exterior balcony (including glass/floor/railings)/ storage room  
[reproduced as written]*

*Additional Comments:*

*Property found in very abused/poor conditions. Walls were painted or damaged (holes), counters scratched, some drawers/bedrooms doors and closet doors were broken beyond repairs. Carpets are in rough shape and need cleaning or replacement, property needs fresh coat of paint and repairs. Fridge door is damaged (beyond repairs), floors need to be re-stored, found (1) broken window in the living room. We removed 3 heavy loads of junk, including: 1 L-shaped couch, 1 mattress and box spring, 1 bbq, 40+ bags of garbage, monitors, snowboard, full cardboard boxes, rotten food, personal care items, etc.  
[reproduced as written]*

The landlord relies upon the submitted copies of:

Maids 4u invoice dated January 9, 2020  
Glass Doctor invoice dated January 17, 2020  
Condition Inspection Report completed by the landlord only dated October 30, 2019

## Analysis

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 this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I accept the landlord's undisputed affirmed testimony that the tenants vacated the rental unit leaving it dirty and damaged. However, the landlord has claimed that the cleaning service, "Maids 4u invoice dated January 9, 2020" also includes the work for drywall repair and carpe cleaning. The landlord repeated stated that these two items were listed within the scope of work. A detailed review of the scope of work on the invoice shows no actual repair work for drywall. A reference is made for cleaning for "all floors".

*Deep Detail Move Out Cleaning including Balcony and Storage (January 7, 2020)*  
*Detail Junk Removal including storage (3 loads)*  
*Including: Kitchen (all appliances, counters, cub-boards in/out/ behind appliances/ sink/etc/all common areas/ **all floors**/ some walls & windows/ window seals/all doors, frames & trims/ all living areas/baseboards/main entrance/ dusting through-out/ light fixtures/ bathroom, etc*  
*Exterior balcony (including glass/floor/railings)/ storage room*  
*[reproduced as written on invoice]*

A review of the invoice also shows:

### *Additional Comments:*

*Property found in very abused/poor conditions. Walls were painted or damaged (holes), counters scratched, some drawers/bedrooms doors and closet doors were broken beyond repairs. Carpets are in rough shape and need cleaning or replacement, property needs fresh coat of paint and repairs. Fridge door is damaged (beyond repairs), floors need to be re-stored, found (1) broken window*

*in the living room. We removed 3 heavy loads of junk, including: 1 L-shaped couch, 1 mattress and box spring, 1 bbq, 40+ bags of garbage, monitors, snowboard, full cardboard boxes, rotten food, personal care items, etc.*  
[reproduced as written on invoice]

I note that a review of the additional comments area does not reveal any repair work or reference to carpet cleaning.

On this basis, I find that the landlord has failed establish a claim for the amount sought of \$509.00 for drywall repairs. Although not specifically mentioned for carpet cleaning, I allow the landlord's claim for \$100.00 in carpet cleaning as it is noted that "all floors" were cleaned as part of the cleaning service.

On the landlord's claim for \$1,344.00 for the full replacement value of a new refrigerator due to a dented door on the fridge, I find that the landlord has failed. The landlord confirmed in her direct testimony that the claim is based upon an estimate from an online ad and that there was no replacement of the fridge. The existing fridge is in use. However, I do find that the landlord has provided undisputed affirmed testimony that the tenants caused damage to the fridge cosmetically which has devalued it. On this basis, I grant the landlord an arbitrary nominal award of \$150.00 for the damaged fridge.

The landlord has established a total monetary claim of \$250.00. The landlord having been partially successful is entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain \$350.00 from the \$675.00 security deposit currently held. I order the landlord to return the remaining \$325.00 balance.

### Conclusion

The tenants are granted a monetary order for \$325.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the 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: April 14, 2020