



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL-S FFL

### Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenants 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 were served with the other's materials and based on the testimonies I find each party was served 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 the security deposit for this tenancy?

Are the landlords entitled to recover their filing fee from the tenants?

### Background and Evidence

This tenancy began on July 16, 2017 and October 31, 2019. The monthly rent was \$2,400.00 payable on the 1<sup>st</sup> of each month. A security deposit of \$1,200.00 was paid at the start of the tenancy and is still held by the landlord. The rental unit is a suite in a

multi-unit condo building. The tenants no longer reside in the suite and it is occupied by new tenants.

A condition inspection report was prepared by the parties at both the start and end of the tenancy. A copy of the report was submitted into evidence. The tenants provided a forwarding address on the report dated October 30, 2019. The landlord noted some damage and issues requiring cleaning on the report. While both parties signed the report the tenant disagreed with the landlord's assessment of the condition of the suite and did not provide authorization that any amount could be deducted from the deposit.

The landlord submits that the rental unit required cleaning and says that they spent several hours restoring the suite to its pre-tenancy condition. The landlord also submits that the carpets needed to be cleaned and they incurred costs for the cleaning. The landlord submits that the cost of cleaning and carpet cleaning is \$230.00.

The parties noted that there was a hole made in the bedroom door of the suite. The tenants acknowledged that they made a hole but said that they repaired it prior to the end of the tenancy. The landlord submits that while the tenants repaired the hole it was not adequately done and seek a monetary award of \$30.00 for future repairs they may make.

The landlord seeks the cost for repairs to water damage to the units below the rental unit attributing the source of the damage to the tenants. The landlord provided documentary evidence showing that the total cost of repairs is \$3,327.45. The landlord submitted evidence that on August 11, 2017, shortly after the tenancy commenced, the downstairs neighbors reported water damage to their units. The strata corporation investigated the damage and ultimately attributed it to the rental unit. A copy of the letter from the strata corporation was submitted into evidence.

The landlord says that the damage to the lower units is the result of the tenants improperly using water in the rental suite. The landlord submits that the tenants had access to the rental unit from mid-July, 2017 and that they are responsible for the subsequent damage caused.

The tenants dispute that the damage to the lower units is their responsibility. The tenants submit that while they had possession of the rental unit from mid-July, they did not begin to reside in the rental unit until August 11, 2017, the date of the initial complaint by the downstairs neighbor. The tenants suggest that the nature of the water

damage as evidenced in the landlord's photographs are more consistent with long-term water seepage that would have started prior to their tenancy.

### Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In the present case the tenants provided their forwarding address on the condition inspection report dated October 30, 2019 before the tenancy ended on the 31<sup>st</sup>. The landlord filed their application for an order allowing them to retain the security deposit on November 13, 2019. I find that the landlord filed their application within the 15 days required under the *Act*.

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.

While I accept that the landlord incurred costs from the strata for water damage to the neighbors, I find that the landlord has not met their evidentiary burden on a balance of probabilities that the damage and loss is attributable to the tenants.

I accept the evidence that the water damage originated from the rental suite. However, based on the timing of the reported damage I find that I am presented with a question of causality. The parties agree that the tenants took possession of the rental suite in July, 2017 and the damage was first reported by the downstairs neighbor on August 11, 2017. While it is possible that the water damage was caused by actions taken by the tenants after they had taken possession of the rental suite I find it also possible that the originating water leakage from the rental suite could have pre-dated the tenancy. The documentary evidence submitted by the landlords include photographs showing stains and discoloration on the walls and ceilings of the lower neighbor's units and invoices which detail some of the damage observed by third party professionals. While some

reference is made to the origins of the leaks from the rental unit I find that the evidence does not demonstrate that this was a singular occurrence arising out of the use of the rental suite after the tenancy had started.

While it is possible that the landlord's position that the water damage is caused by the tenants is correct, I find it equally probable that the water damage pre-dates the tenancy. This is not a case where water was flooding into the lower unit, something that would have been immediately noticeable, but a slow ingress of water into the neighboring units which could have resulted from earlier use of the rental unit. Given the timing of the first report occurring so closely after the tenancy had commenced, I find that I am unable to determine that it is more likely than not that the damage is attributable to the tenants. Where two contradicting but equally likely theories are given the landlord cannot be said to have met their evidentiary burden on a balance of probabilities. For these reasons I dismiss this portion of the landlord's application.

While the landlord claims an amount of \$30.00 for damage to a door in the rental unit the landlord testified that they have not performed any repairs, have not incurred any costs nor has the condition of the door prevented them from renting out the suite to a new occupant. As I find that there is insufficient evidence that the landlord has suffered any loss, I dismiss this portion of the landlord's claim.

I accept the landlord's evidence that the rental unit required some cleaning and work to be performed. I find that the condition inspection report details the specific areas requiring additional work and the landlord has provided additional evidence by way of photographs to demonstrate the accuracy of their assessment. While the tenants have submitted some evidence of their own and disputes the landlord's characterization of the condition of the suite I find that there is insufficient evidence to demonstrate that the condition inspection report is inaccurate. In the absence of a preponderance of evidence to the contrary I find that the landlord's assessment of the suite, as recorded in the condition inspection report is an accurate representation of its state at the end of the tenancy.

I accept the landlord's evidence that they incurred some costs for cleaning. I accept the landlord's submission that the total cost of the work done to be \$230.00. Accordingly, I issue a monetary award in the landlord's favour in that amount.

As the landlords were partially successful in their application they are entitled to recover the filing fee for this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$330.00 of the tenant's security deposit in full satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$870.00, allowing the tenants to recover the security deposit for this tenancy less the monetary award issued to the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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: April 3, 2020

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Residential Tenancy Branch