



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

The landlord filed an application for dispute resolution (the “Application”) on February 15, 2020 seeking an order for compensation for damage caused by the tenant, and compensation for monetary loss or other money owed. The landlord applies to use the security deposit towards compensation on these two claims. Additionally, the landlord seeks to recover the filing fee for the application.

The landlord stated they delivered notice of this dispute hearing to the tenant via Canada Post registered mail on February 20, 2020. Evidence for this is the receipt bearing a tracking number. In the hearing the tenant confirmed they received the notice of this hearing and the landlord’s evidence via registered mail on February 27, 2020. This information verifies the material was sent to the tenant. The tenant did not submit documents as evidence for this hearing.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on April 2, 2020. Both parties attended the conference call hearing. I explained the process and offered both parties the opportunity to ask questions. Both parties had the opportunity to present oral testimony and present evidence during the hearing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage or compensation pursuant to section 67 of the *Act*?

Is the landlord entitled to retain the security deposit pursuant to section 38 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 \$475.00. This is the amount of the security deposit as outlined in the residential tenancy agreement between the landlord and tenant. A 'Monetary Order Worksheet' completed by the landlord lists 7 items with amounts. These are primarily cleaning products, painting supplies, and an estimate for 23 hours of total cleaning time. The sum total of individual items exceeds the amount of the security deposit; however, the landlord claims only the amount of the security deposit and nothing more. The landlord confirmed this in the hearing.

The tenant stated they were living in the unit for approximately three years before the landlord moved in, with a new tenancy starting on May 30, 2018. Both parties signed the current agreement on June 2, 2018. The rental amount was \$1,065.00 monthly, payable on the 1<sup>st</sup> of each month. The security deposit amount of \$400.00 and a pet damage deposit of \$75.00 was paid to the previous landlord under a previous agreement. This is verified on the previous tenancy agreement from 2015 provided by the tenant. The current agreement bears a handwritten note: "paid and transferred to owner", with the tenant and landlord initials at that spot. The tenant presented evidence that the unit was not painted during their tenancy in it – moreover, the unit was not, to their knowledge, painted since 2012.

The landlord issued a 'Two Month Notice to End Tenancy' on January 15, 2020, setting the final move out date of March 31, 2020. The tenancy ended after the tenant gave notice on January 23, 2020, then vacating the unit on February 2. On that date, the tenant did meet with the landlord for a walkthrough inspection of the unit. A 'Condition Inspection Report' (the "report") was not completed at that time. The landlord only acquiring the unit within the last three years, so an older extant report was not completed by the previous landlord, and no report was forwarded to them. The Report as it exists in the evidence submitted by the landlord bears details of the condition of the unit, and the signature of the landlord only, showing the date of the inspection meeting being February 2, 2020. The tenant states they did not sign the report because the landlord did not complete it during the final inspection. The landlord provided photos showing the condition of the unit post-vacancy.

The landlord's account of the condition inspection meeting is that they did a walkthrough and identified many dirty areas requiring more cleaning. There were belongings left on the property, with the landlord having to message the tenant to come and retrieve these items and undertake more cleaning. They stated the tenant admitted to not washing the walls and identified items they stated did not belong to them.

A witness statement attests to the amount of cleaning needed after the move out. Both parties agree the landlord messaged to the tenant on February 6<sup>th</sup> requesting to keep the security deposit. The tenant responded on February 6<sup>th</sup>, stating their disagreement in a letter that appears in the landlord's evidence.

The tenant's account of the move out day is that the landlord during the walkthrough did not mention additional cleaning, though had discussed individual deficiencies. The tenant maintains these were present upon their move in. At that time the tenant admitted to items that remained on the property, though "[the landlord] was not bothered about it at that time." They stated: "when I left I felt everything was fine."

The tenant's letter of February 6, 2020 contains the following points:

- The landlord did not mention any issues at the time of the walkthrough
- They did not "sign off on any issues at that time"
- Individual flaws were present when they moved in
- They offer \$20 for 3 bags of garbage and a "moldy suitcase" left behind
- The never completed a Report, neither at the start of the tenancy nor at the end –
- They also had not at the time of the letter received a copy of the report
- They request the "damage deposit of \$537.50 less the \$20" – this is based on one-half month's current rent amount of \$1065.00.

### 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.

Sections 23 and 24 set out the requirements for the landlord and tenant together at the start of a tenancy, and the consequences if the report requirements are not met. Subsection (3) provides that the right of the landlord to claim against the deposit is extinguished where the landlord does not complete the report nor give a copy of it to the tenant.

Section 37(2) of the Act requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I note that for the purposes of this claim, the landlord must provide sufficient evidence to establish any alleged damage occurred during the tenancy and as such, must have provided evidence of the condition of the rental unit at the start of the tenancy. However, there is no requirement for the landlord to meet the same burden when it relates to any cleaning required at the end of the tenancy.

In this hearing, I find the landlord properly applied for dispute resolution within the 15 days set out in the *Act*. I am satisfied the tenant provided their forwarding address on February 6, 2020. The issue then is the assignment of responsibility, if at all present, for the damages to the rental unit.

In the hearing the tenant stated that the issues identified and asked about during the walk-through were present when they moved into the unit in September 2015. There is no proper measure of the state of the unit at the start of this tenancy. In order to be successful in their application, the landlord must provide sufficient evidence that damages claimed are the responsibility of the tenant.

The accuracy of the Report, and the weight I can attach to it as evidence, is reduced with no record of the state of the unit when the tenant moved into the unit in September 2015. The tenant presented twofold evidence that runs counter to the accuracy of the Report, as presented: their testimony is that discussions took place with the landlord on the move out date that indicated they took no issue with the condition of the unit; any issues present existed prior to their move in.

I find the Report was not completed with the tenant present on February 2. The tenant testified that she received communication on February 6 to indicate that the landlord wished to keep the security deposit, and this was the first messaging of its kind to them. I find the tenant did not properly have the chance to address issues and did not receive a copy of the report on February 6 and stated so in their reply to the landlord on the same date.

The landlord's worksheet identifies three separate needs: painting, cleaning, and damage.

The photos by the landlord show scratches and holes in the wall at the end of the tenancy – approximately half the photos show patchwork undertaken, presumably to show the areas needing painting. The landlord presented no evidence at all from the start of the tenancy to

show the condition of the walls at that time. The tenant did present the unit was not painted during their tenancy.

When I consider the lack of evidence from the landlord as to the condition of the unit at the start of the tenancy, I find the landlord has failed to establish that any damage to the finish occurred as a result of the actions or neglect of the tenant. I attribute the painting work, as presented, to wear and tear over the course of at least seven years' duration.

Damage to a door appears to warrant repair. I cannot determine the source of the damage, and there is no evidence to establish the time in which the damage occurred. The landlord has not fairly established the condition of this door prior to the start of the tenancy.

The photos also show interior cabinets needing cleaning. On this point I give weight to the evidence of the tenant that the landlord did not take issue with the cabinets. The photos do not show evidence that outweighs that of the tenant on this point. I find the tenant left the rental unit reasonably clean at the end of the tenancy. The evidence is lacking with no report documenting the condition when the tenants retained occupancy.

The Monetary Order worksheet shows materials and estimates for cleaning time and money. This does not accurately establish costs which the tenant must bear. The damages from this perspective of cleaning are not quantified – the list of expenses for cleaning materials and replacing broken items is not supported by receipts, nor sufficiently itemized. As such, I cannot award compensation for this work from the security deposit amount. I find the landlord has added the amount as an estimate only.

For the reasons above, I find the landlord has not presented a preponderance of evidence to show on a balance of probabilities that the repairs and clean-up of the rental unit is the responsibility of the tenant.

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

Given that the tenant offered \$20.00 for the removal of garbage left behind after move out, and had the discussion with the landlord after, I factor this amount into the amount the landlord shall pay in return to the tenant.

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 \$455.00. This is the amount of the security deposit, less the amount previously agreed to by the tenant. 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: May 5, 2020

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Residential Tenancy Branch