



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Kenson Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      FFL MNDCL-S FFT MNDCT MNSD

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- a monetary order for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

SW, agent for the landlord, testified on behalf of the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant were duly served with the Applications and evidentiary materials.

**Issue(s) to be Decided**

Are either of the parties entitled to the monetary orders requested?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

**Background and Evidence**

This fixed-term tenancy began on June 1, 2019, and ended on May 31, 2020. Monthly rent was set at \$1,800.00, payable on the first of every month. The landlord collected security and pet damage deposits in the amounts of \$900.00 each deposit. Both parties confirmed that the landlord was still in possession of both deposits.

At the outset of the hearing, the landlord's agent confirmed that they are no longer pursuing their monetary claim, with the exception of the filing fee. Accordingly, the landlord's monetary claim is cancelled, with the exception of the filing fee. The landlord testified that they had no choice but file an application within 15 days of the move-out date, as required by section 38 of the *Act*, in order to retain the tenant's deposit while awaiting a decision from strata council about outstanding strata bylaw infractions. Both parties confirmed that strata council had granted the tenant's application to remove the fines.

The landlord's agent testified that the landlord was not disputing the tenant's monetary claims of \$45.00 for the NSF fee, and the return of the security deposit less the agreed deduction. The tenant confirmed that he had agreed to the deduction as confirmed on the condition inspection report, which states that the tenant would reimburse the landlord \$70.00 plus tax for carpet cleaning. With a calculation of 12% tax, the total deduction would be \$78.40. As the landlord agreed to the monetary orders, the tenant will be provided a monetary order for these amounts. The tenant testified that he was still seeking reimbursement of the filing fee as he had incurred the cost in order to recover his security deposit and the \$45.00 NSF fee. The tenant is seeking reimbursement of the filing fee as he filed his application for dispute resolution due to the outstanding matters that remain unresolved after the tenancy had ended. The tenant testified that he did not receive a resolution until after the filing of this application.

**Analysis**

I find that the landlord had filed their application in order to comply with section 38 of the *Act* as they were awaiting a final decision on whether strata council was going to uphold a fine for a bylaw infraction. I find that they had justified the filing of their application on this basis, and I allow the landlord to recover the filing fee from the tenant.

I find that the tenant's application has merit as well, as he had filed this application in attempt to resolve outstanding issues with money owed to him for this tenancy. On this basis, I allow the tenant to recover the filing fee from the landlord.

As both parties were successful in obtaining offsetting monetary awards for the recovery of the filing fee, no order will be made in regards to the recovery of their filing fees.

**Conclusion**

As both parties were successful in obtaining offsetting monetary awards for the recovery of the filing fee, no order will be made in regards to the recovery of their filing fees.

As agreed to during the hearing, I issue a Monetary Order in the tenant's favour in the amount of \$45.00 for the reimbursement of the NSF Fee, and \$1,800.00 less the agreed deduction of \$70.00 plus tax for reimbursement of the tenant's deposits. The total monetary order will be \$1,766.66.

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible in the event that the landlord does not abide by condition #1 of the above agreement. 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: July 9, 2020

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Residential Tenancy Branch