



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Capital Region Housing Corporation  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** *MNSD, MND, FF*

### **Introduction**

This hearing dealt with an application by the landlord pursuant to sections 67, 38 and 72 of the *Residential Tenancy Act*. The landlord applied for a monetary order for the cost of repairs and for the recover of the filing fee. The landlord also applied to retain the security deposit in full satisfaction of the claim

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented herself. The corporate landlord was represented by their agents.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

### **Issues to be decided**

Is the landlord entitled to retain the security deposit in full satisfaction of the monetary claim?

### **Background and Evidence**

The background facts are generally undisputed. The tenancy started on January 01, 2016 and ended on July 31, 2020. The monthly rent was \$294.00 per month and was due on the first day of each month. Prior to moving in the tenant paid a security deposit of \$200.00.

The landlord testified that starting September 2019, remedial work was carried out to the building envelope and one of the items that was replaced were the windows.

The landlord stated that as per building code the use of restrictors were required to limit the extent the window could open, to ensure the safety of all occupants.

The tenant was informed in a letter dated May 08, 2020 that removal of the restrictors puts her in breach of the tenancy agreement and puts the landlord and the building society in breach of the building code. Despite multiple written warnings, the tenant went ahead and removed the restrictors.

The tenant stated that in the Spring and Summer months, her unit got extremely hot and her medical condition made the heat unbearable for her. The tenant testified that the restrictors allowed the window to open to 4 inches which restricted the airflow into the unit. The tenant filed a doctor's note that states she has allergies that can be triggered by poor ventilation and airflow. The tenant admitted to having the restrictors removed but added that she reattached the restrictors to the window at the end of tenancy.

The landlord testified that at the end of tenancy, a technician was hired to check the safety of the window and some damage to the window frame had occurred from the hyperextension of the windows when the restrictors were not in place. The landlord is claiming \$105.00 for the repair and has filed an invoice to support his claim. The landlord is also claiming \$100.00 for the recovery of the filing fee.

### **Analysis**

Based on the sworn testimony of both parties, I find that the tenant agreed to having removed the restrictors on the window without the permission of the landlord. I further find that by doing so, the tenant caused the windows to be noncompliant with the building code and jeopardised her safety and the safety of her visitors. In addition, it put the landlord and building society in breach of the building code.

I accept that the tenant has a medical condition that requires more airflow than this window could provide, but the tenant could have looked for different remedies that did not violate the building code.

Based on the above, I find that the landlord is entitled to \$105.00 for the cost of repairs and since he has proven his case, he is entitled to the recovery of the filing fee of \$100.00. Overall, the landlord has established a claim of \$205.00. The landlord offered to accept the retention of the security deposit of \$200.00 in full satisfaction of his claim.

**Conclusion**

The landlord may retain the security deposit of \$200.00.

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: November 30, 2020

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Residential Tenancy Branch