



# 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 order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security and pet damage deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant was represented by their agent (the "tenant").

As both parties were represented service was confirmed. The tenant confirmed receipt of the landlord's application package and said they have not served any materials themselves. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the landlord's application and evidence.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the deposits for this tenancy?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The parties agreed on the following facts. This tenancy originally began in March, 2017 and ended in July, 2020. The rental unit is a partially furnished suite with furniture provided by the landlord. The parties signed a fixed-term tenancy renewing the terms of the tenancy in March, 2020. Monthly rent was \$1,850.00 payable on the first of each month. The tenant paid a security deposit of \$925.00 and an additional deposit of \$925.00, both still held by the landlord. The landlord characterizes the second deposit as a “furniture deposit”. The tenant says the second deposit is a pet damage deposit as noted on the signed tenancy agreement.

The parties agree that no condition inspection report was prepared at any time for this tenancy.

The landlord submits that the furniture in the rental unit was damaged and stained and seeks a monetary award in the amount of \$2,200.00 for the costs of replacement and cleaning of the suite. The landlord submitted into evidence some photographs of the suite as well as online listings for the furniture they intend to purchase to replace the damaged articles.

The tenant disputes the landlord’s claim in its entirety and submits that they have not given written authorization that the landlord may retain any portion of the deposits.

### Analysis

The parties agree that a security deposit of \$925.00 was paid and is still held by the landlord. The parties disagree on the characterization of the second deposit. The landlord testified that the second deposit should be considered a “furniture deposit”. I find that the landlord’s submission contradicts their own documentary evidence by way of the signed tenancy agreement and addendum. I find that throughout the signed tenancy agreement reference is made to the second deposit amount being a pet damage deposit. While the agreement also includes a clause prohibiting pets, I find no reference to this second deposit amount being held in relation to the furniture provided. There is no documentary evidence in support of the landlord’s position, whether it be by way of a revision or subsequent correspondence. Based on the totality of the evidence I find the reasonable conclusion is that the second deposit amount was intended to be a pet damage deposit.

Section 38 of the *Act* requires the landlord to either return the tenant's security and pet damage deposit in full or file for dispute resolution for authorization to retain the deposits 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security and pet damage deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

Furthermore, section 24 of the *Act* outlines the consequences if the landlord does not prepare a condition inspection report at the start of the tenancy in accordance with the *Act*. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord  
...  
(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The landlord testified that no condition inspection report was prepared at any time during this tenancy.

Accordingly, I find that the landlord had extinguished their right to claim against the security and pet damage deposit for this tenancy by failing to prepare a proper condition inspection report in accordance with the statutory requirements.

Based on the undisputed evidence before me, I find that the landlord had extinguished her right to apply to retain the security deposit for this tenancy and has failed to return the tenant's security and pet damage deposit in full. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a \$3,700.00 Monetary Order, double the value of the security and pet damage deposit paid for this tenancy. No interest is payable over this period.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. Pursuant to section 7(2) of the Act the claimant must take reasonable steps to attempt to minimize the damage or loss.

While the landlord has submitted photographs and testimony regarding the damage to the rental unit in the absence of a condition inspection report prepared at the start of the tenancy, I find there is insufficient evidence of the original condition. I find the materials submitted by the landlord and their testimony to be insufficient to meet their evidentiary burden on a balance of probabilities to demonstrate that there was damage to the rental unit and its furnishings attributable to the tenancy.

I find, based on the evidence submitted, that the landlord has not proven there is damage or loss arising as a result of the tenant's violation of the Act, regulation or tenancy agreement. Consequently, I dismiss the landlord's claim.

### Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$3,700.00 against the landlord, allowing for the return of double the security and pet damage deposit for this tenancy. The tenant is provided with a Monetary Order in the above terms and 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.

The landlord's application is dismissed in its entirety without leave to reapply.

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 6, 2020

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Residential Tenancy Branch