



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### **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 loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

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.

During the hearing the landlord LA confirmed the proper spelling of her surname as the spelling of her name was spelled differently on both party’s applications. As neither party was opposed, LA’s name was corrected on both applications to reflect the proper spelling of her surname.

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 parties were duly served with each other's Applications and evidence.

**Issue(s) to be Decided**

Are both parties entitled to a monetary order for compensation and losses that they have applied for?

Is the tenant entitled to the return of their security deposit?

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

**Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy originally began sometime between November 21, 2017 and December 1, 2017 as a fixed-term tenancy. The tenancy continued on a month-to-month basis until it ended on August 1, 2020. Monthly rent was set at \$1,724.00, payable on the first of the month. The landlords collected a security deposit in the amount of \$825.00, which they still hold.

The tenant filed her application requesting the following monetary orders:

Return of Security Deposit	\$825.00
Compensation under section 38 of the Act	825.00
Return of Move-In Fee	100.00
Compensation for lost wages, loss of enjoyment, laundromat costs, and other losses	500.00
Filing Fee	100.00
<b>Total Monetary Order Requested</b>	<b>\$2,350.00</b>

Both parties confirmed that the tenant provided her forwarding address in writing on July 16, 2020. The tenant testified that she had never agreed in writing to allow the landlords to retain any portion of the deposit. The landlords testified that they retained the security

deposit as they were waiting to assess the value of the damage and losses. The landlords filed their own application for dispute resolution on August 25, 2020.

The tenant is also seeking the reimbursement of the \$100.00 move-in fee she paid at the beginning of the tenancy. Both parties confirmed that the \$100.00 move-in fee was paid by the tenant. The tenancy agreement includes a notation that a \$100.00 move-in fee was paid on November 20, 2017. The tenant feels that this fee is the responsibility of the landlords, and is requesting the reimbursement of this amount. The landlords argued that their agent had explained to the tenant that she had to pay a move-in fee, and that she had agreed to it, and paid it.

The tenant is seeking a further \$500.00 monetary award which the tenant feels is fair compensation for the losses associated with this tenancy including her loss of quiet enjoyment and reasonable privacy, loss of access to the washer and dryer, and missed work to accommodate trades people. The tenant provided a letter detailing the issues she experienced during this tenancy, as well as other supporting materials. Both parties confirmed that the landlords did provide some compensation for the tenant's utilities.

The landlords provided the following claims in their monetary order worksheet:

Item	Amount
Painting	\$420.00
Carpet Change	3,000.00
Estimate for Cleaning	200.00
Estimate for Total Damage	9,000.00
Filing Fee	100.00
<b>Total Monetary Order Requested</b>	<b>\$12,720.00</b>

The landlords testified that the tenant was running a business on the property without their permission, and as a result of the heavy traffic, the tenant caused damage beyond regular wear and tear. The landlords also testified that the tenant failed to report issues in a timely manner, contributing to the damage and losses. The landlords submitted photos, as well as invoices in support of their claim. The landlords testified that they did conduct a move-in inspection, but did not submit a copy of the move-in inspection report. The landlords confirmed that no move-out inspection report was completed. The tenant testified that the landlords did not perform a move-in or move-out inspection, nor did they provide her with copies of any reports. The landlords testified that they had purchased the home in 2017, and that it was newly painted. The landlords testified that the home was built in 2012.

The tenant argued that the home was not newly painted at the beginning of the tenancy, and is disputing all of the landlords' claims.

### **Analysis**

Section 38(1) of the *Act* requires that landlords, within 15 days of the end of the tenancy or the date on which the landlords receive the tenants' forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlords to retain the deposit. If the landlords fail to comply with section 38(1), then the landlords may not make a claim against the deposit, and the landlords must return the tenants' security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenants' provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenants agree in writing the landlords may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlords did not return the tenant's security deposit in full within 15 days of the end of this tenancy. The landlords did not apply for dispute resolution to obtain authorization to retain any portion of the tenants' security deposit until August 25, 2020, well past the 15 day time limit for doing so. The tenant gave sworn testimony that the landlords did not have her written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

*Unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenants' forwarding address is received in writing; ...*
- *whether or not the landlord may have a valid monetary claim.*

I also note that despite the testimony of the landlords, I am not satisfied that the landlords had complied with sections 23 and 35 of the *Act* which requires the landlords

to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that “the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished”, as noted in sections 24(2) and 36(2) of the *Act*.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the original security deposit.

The tenant filed an application for reimbursement of the \$100.00 move-in fee. I find that the evidence shows that this \$100.00 was paid by the tenant at the beginning of this tenancy. I find that the tenant had agreed to pay this move-in fee as requested by the landlord through their agent. Accordingly, I dismiss this portion of the tenant’s monetary claim without leave to reapply.

The tenant also requested a monetary award of \$500.00. Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

***Liability for not complying with this Act or a tenancy agreement***

**7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

### **Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following...

(b) freedom from unreasonable disturbance;...

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

I have considered the testimony of both parties, and while the tenant had provided testimony and a written summary of the various issues she experienced during this tenancy, I am not satisfied that the tenant had provided sufficient evidence to support her claim. Although I sympathize with the tenant and the fact that she was inconvenienced during this tenancy, I find that she did not establish how the amounts requested were obtained, either referenced and supported by similar claims of this nature, or by providing pay stubs, receipts, or statements to support the damages or losses the tenant is seeking in this application. As stated above, the onus is on the tenant to support the value of her loss. On this basis, I dismiss the tenant's entire monetary claim without leave to reapply.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear. The landlords testified that a move-in inspection report was completed. The conflicting testimony of the tenant was that the landlords did not perform a move-in or move-out inspection, nor did they provide any copies of the inspection reports. No inspection reports were submitted in evidence. Sections 23 and 35 of the *Act* require the landlords to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that "the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished", as noted in sections 24(2) and 36(2) of the *Act*. Although the landlords

claim that a move-in inspection was done, as well as a report, no reports were submitted in evidence. I am not satisfied that the landlords had provided sufficient evidence to support that they had complied with sections 23 and 35 of the *Act*. In the absence of a move-in or move-out inspection report, and in light of the disputed testimony, I have no way of ascertaining what damages had occurred beyond wear and tear during this tenancy unless agreed to by the tenant. The tenant disputes the landlords' claims that she had failed to leave the home in reasonably clean and undamaged condition beyond regular wear and tear. Although the landlords believe that the tenant's business contributed to excess wear and tear and damage to the home, I do not find this claim to be substantiated.

In consideration of the other damages and losses claimed by the landlords, in the absence of a move-in or move-out inspection report, I am not satisfied that the landlords had provided sufficient evidence to support that the tenant had caused the damage or losses claimed by the landlords. On this basis, I dismiss these claims without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was only partially successful with her claim, I allow the tenant to recover half of the filing fee for her application. As the landlords were unsuccessful with their claims, the landlords' application to recover the filing fee is dismissed without leave to reapply.

### **Conclusion**

I dismiss the landlords' entire application without leave to reapply.

I issue a Monetary Order in the tenant's favour under the following terms which allows the tenant a return of her security deposit, plus a monetary award equivalent to the value of their security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*. I also allow the tenant to recover half of the filing fee. The remaining portion of the tenant's application is dismissed without leave to reapply.

<b>Item</b>	<b>Amount</b>
Return of the Security Deposit retained by the landlords	\$825.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	825.00
Half of Filing Fee	50.00
<b>Total Monetary Order to Tenant</b>	<b>\$1,700.00</b>

The tenant is provided with this Order in the above terms and the landlords must be served with a copy of this Order as soon as possible. Should the landlords 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: December 31, 2020

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Residential Tenancy Branch