



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL, MNDL-S

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The landlord acknowledged receipt of evidence submitted by the tenant. The landlord testified that he submitted his documentary evidence to the Branch but not the tenant. Residential Tenancy Branch Rules of Procedure 3.14 addresses the issue as follows:

*3.14 Evidence not submitted at the time of Application for Dispute Resolution Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.*

As the landlord has not served his documentary evidence to the tenant in accordance with the Rules of Procedure, I have not considered it in making this decision.

### Issue to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?  
Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

### Background and Evidence

The landlord gave the following evidence. The landlord testified that the tenancy began on September 1, 2018 and ended on August 31, 2020. The monthly rent of \$3000.00 was due on the first of each month. The tenant paid a security deposit of \$1450.00 which the landlord still holds. The landlord testified that he did not conduct written condition inspection reports at move in or move out. The landlord testified that the tenant left the unit dirty with some minor damage to the cooktop and hood fan, as well as some damage to walls and mouldings. The landlord testified that the unit was left very dirty. The landlord testified that he is seeking a monetary claim of \$2288.31 plus the recovery of the \$100.00 filing fee.

The tenant gave the following testimony. The tenant adamantly disputes all the damages as alleged by the landlord. The tenant submits that the landlord has not provided enough evidence to support his claim. The tenant submits that he should be entitled to the return of his security deposit in full.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I address the landlords claim and my findings as follows.

As the landlord has not provided any documentation to support his claim, he has not been able to prove any of the four elements as noted above. It's worth noting that the landlord only gave rough estimates to the amount being sought and was very unclear as to what repairs he had done and the amount it cost him. Based on all of the above and insufficient evidence before me, I hereby dismiss the landlords application in its entirety without leave to reapply. The landlord must return the \$1450.00 security deposit back to the tenant.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply. The landlord is to return the \$1450.00 security deposit to the tenant. I grant the tenant an order under section 67 for the balance due of \$1450.00. This order may be filed in the Small Claims 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: January 04, 2021

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Residential Tenancy Branch