



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNRL-S, FFL

### 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 a full opportunity to be heard, to present their sworn testimony, to make submissions and arguments. The tenant acknowledged receipt of evidence submitted by the landlord. The tenant did not submit any documentation for this hearing. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue(s) 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's testimony is as follows. The tenancy began on December 15, 2018 and ended on September 30, 2020. The tenant was obligated to pay \$2900.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$1450.00 security

deposit. The landlord returned \$571.37 which the tenant confirmed he has received. The landlord testified that he was seeking \$500.00 for unpaid rent and \$378.63 for suite cleaning. In his opening statement, the landlord testified that he would be returning the \$378.63 to the tenant as he neglected to submit important documents to support that portion of his claim and feels it should be returned to the tenant on that basis.

The landlord testified that in June 2019 the tenant sent him a message that the garage door wasn't working properly. The landlord testified that the tenant withheld \$200.00 from the rent due for July 2019 and then another \$300.00 for October 2019 rent for the same reason. The landlord assumed that the tenant had hired a professional to fix the garage door, but later found out that the tenant had done the work himself and charged the landlord without providing receipts or obtaining his permission to do the work or apply a rent reduction. The landlord seeks the return of the \$500.00 and the recovery of the filing fee.

The tenant gave the following testimony. The tenant testified that the unit was left spotless. The tenant testified that he withheld the amount stated by the landlord for his time to fix the garage door.

### 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.

It is worth noting that the tenant was extremely argumentative during the hearing and would not address the issue at hand. I attempted to assist the tenant to focus on the only live issue before me. The landlord advised in his opening statement that he would not be pursuing the cleaning costs and would be returning that amount back to the tenant but for some unexplained reason, the tenant continually referred to it. Each time the tenant was given the opportunity to speak, he would continue with disputing the

cleaning costs. I explained to the tenant on more than five occasions that the landlord would be returning that amount back to him and that he was only seeking unpaid rent, but to no avail. In addition, the tenant would use his time to voice his displeasure with section 38 of the Act.

The tenant confirmed that he didn't have the landlords written or verbal authorization to fix the garage door. The tenant testified that he was tired of hearing his wife complain about the garage door, so he attempted to fix it and withheld rent without the landlords' consent. The tenant has confirmed in his own testimony the amount sought by the landlord. I am satisfied that the landlord is entitled to the \$500.00 in unpaid rent and is entitled to retain that amount from the security deposit in full satisfaction of the claim.

As the landlord was only partially successful, I find that he must bear the cost of the filing fee.

### Conclusion

The landlord has established a claim for \$500.00. I order that the landlord retain that amount from the remaining \$878.63 security deposit in full satisfaction of the claim. The landlord will return the remaining portion of the security deposit to the tenant. I grant the tenant an order under section 67 for the balance due of \$378.63. 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: February 01, 2021

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Residential Tenancy Branch