



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNSD, FFT, 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 landlord 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 tenants pursuant to section 72.

The tenants requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; 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.

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 the landlord and tenants were duly served with the Applications and evidentiary materials.

### **Issue(s) to be Decided**

Is the landlord entitled to a monetary order for losses or damage?

Are the tenants 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**

This tenancy originally began as a fixed-term tenancy on September 1, 2020. The tenancy continued after August 15, 2020 on a month-to-month basis with monthly rent set at \$3500.00, payable on the first of every month. The tenants paid a security deposit in the amount of \$2,500.00 and a pet damage deposit in the amount of \$1,000.00, which the landlord still holds. Both parties also confirmed that no move-in or move-out inspection reports were completed for this tenancy.

The tenants applied for the return of their deposits and recovery of the filing fee.

The landlord submitted a monetary claim in order to recover their losses associated with the tenancy as listed below:

<b>Item</b>	<b>Amount</b>
Refinish Floors	\$4,189.50
Repaint Baseboard	392.00
Moving Service for Furniture	525.00
<b>Total Monetary Order Requested</b>	<b>\$5,106.50</b>

The landlord testified that prior to this tenancy, none of the previous tenants or occupants had pet in this suite. The landlord believes that the damage to the hardwood flooring is indicative of damage by a large dog like the tenants'. The landlord submitted a statement from the property manager confirming that there were no pets prior to this tenancy, as well as the statement and contract from the previous tenant to show that they did not have any pets. The landlord obtained quotations to refinish the damaged flooring. The landlord submitted photos of the damage to three different flooring refinishing companies who stated the following: "looks like from a large dog", "restore floor to original shape due to dog damage", and "based on the photo you provided, the scratches could be from furniture, however, due to the various directions of the scratches, it's more likely to be from an animal, possibly a dog". Despite the fact that no move-in or move-out inspection reports were completed, the landlord believes that expert opinion is that the damage was caused by a dog, and maintains that no previous

tenants or occupants had a dog. The landlord also submitted text messages to show that the tenants were content with the condition of the home prior to move-in.

Although the tenants do not dispute that they did have a large dog, the tenants dispute that the damage was caused during this tenancy. The tenants challenged the credibility of the landlord's statement that there were no dogs prior to this tenancy as the current tenants also have a dog. The tenants feel that the landlords have not sufficiently supported that this damage was caused during this tenancy.

### **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 prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* 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. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenant had caused damage and losses in the amounts claimed by the landlord.

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 except for reasonable wear and tear. Both parties confirmed that the landlord had never completed any formal move-in or move-out inspection reports for this tenancy. The landlord testified that despite that fact that no move-in or move-out reports were completed, the home was in perfect condition, and the evidence supports that the floors were in damaged condition at the end of this tenancy. The landlord provided statements from various flooring refinishing companies whose opinion is that the flooring looks to be damaged by a dog. The landlord testified that as none of the previous occupants or tenants had a dog, the damage can be attributed to the tenants' dog during this tenancy.

Sections 23 and 35 of the *Act* require the landlord 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 landlord submitted photos to show the “before” and “after” condition of the flooring, as well as expert statements based on these photos to show that this flooring was most likely damaged by a dog, it is undisputed that the landlord failed to provide completed move-in and move-out inspection reports for this tenancy. In light of the disputed testimony and claim, I find that the landlord’s evidence falls short in proving that the damage was indeed caused by the tenants or their dog during this tenancy. Although the landlord submitted confirmation from the tenants that they wished to proceed with the tenancy, and that they thought the home to be “perfect” and “beautiful”, these acknowledgements by the tenants do not relieve the landlord of their obligation to perform a move-in and move-out inspection in accordance with the *Act* and *Regulation*. Although the landlord provided expert evidence to support that the damage was likely caused by a dog, I do not find that the landlord has met the burden of proof to support show that this damage did not occur prior to this tenancy.

In light of the fact that disputed evidence and testimony, and taking in consideration that the party claiming the loss bears the burden of proof, I find that there is no way to determine what damage occurred during this tenancy, and what the pre-existing condition of the home was. Accordingly, I am dismissing the landlord’s entire monetary claim for damage and losses without leave to reapply.

As the landlord was not successful with their claim, I dismiss the landlord’s monetary claim for recovery of the filing fee without leave to reapply.

I allow the tenants’ application for the return of their deposits, as well as recovery of the filing fee for their application.

### **Conclusion**

The landlord’s entire application is dismissed without leave to reapply.

I issue a Monetary Order in the amount of \$3,600.00 in the tenants’ favour for the return of their security and pet damage deposits, plus recovery of the filing fee for their application. 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.

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 5, 2021