



# 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 was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damage to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to compensation for damages to the unit?

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed facts: The tenancy under written agreement started on July 15, 2019 and ended October 31, 2020. Rent of \$2,250.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,125.00 as a security deposit. The Parties mutually conducted a move-in inspection with a completed report copied to the Tenants. The Landlord received the Tenants' forwarding address on November 19, 2020.

The Landlord states that the Tenant caused the floors to be damaged and claims costs of \$787.50. The Landlord's application sets out the particulars as follows:

Water damage to kitchen floorboards caused by the tenants that was not reported nor responded to in a timely fashion and caused by irresponsible use and negligence (tenant stated it happened in April 2020 and I learned of this in October 2020.) Kitchen floorboards left to soak and turned black from mould, mildew and warped and separated leaving gaps along all four sides of the 9ft x 3.5ft of the island.

The Landlord states that the flooring has not been replaced because the Landlord did not want to spend the security deposit. The Landlord states that it has reduced its claim by supplying the flooring materials. The Landlord provides an estimate for the costs claimed.

The Tenant states that it was not until they felt moisture under the flooring on April 23, 2020 that the Tenants became aware of a leak. The Tenant states that on the same day they notified the Landlord's agent and that a handyman came to the unit on April 25, 2020. The Tenant states that the handyman told them the source of the leak was from a loose faucet and that the handyman repaired the faucet by tightening it. The Tenant states that it has not noticed the loose faucet. The Tenant submits that the water had been leaking along the back of the faucet and down under the counter. The Tenant states that there was no visible leak prior to April 23, 2020. The Tenant states that the handyman told them to keep their own tower fan running for a week to dry the floors and that this was done. The Tenant states that there was no other follow-up by the agent or the handyman. The Tenant submits that the only contact they had during the tenancy was with the agent and that they knew nothing of the owner whom they did not meet until the move-out inspection.

The Landlord states that the Tenants were responsible for the damage as the Tenants should have noticed the leak around the faucet before it started pooling under the floors. The Landlord provides a video of the Landlord's use of the faucet with the head partially off and with the head in place. The Landlord states that with the head partially off the water is shown on the video to spray a small but noticeable amount of water. The Landlord states that at the move-out inspection the Tenant had said that the head was unsecured leading to a leak under the island that was not noticed.

The Landlord states that its agent took two days to respond to the Tenant's report of the water damage on the floors. The Landlord states that the agent never informed the Landlord of the incident when it occurred. The Landlord states that the damage was not known by the Landlord until October 2020. The Landlord states that its insurer said that damage was reported too late to make a claim. The Landlord states that it did not know about the handyman.

The Landlord states that itself and its agent were present for the move-out inspection with the Tenant. The Landlord states that the inspection report was partially filled out when the Landlord and its agent disagreed over the flooring damage. The Landlord states that its Agent refused to tell the Landlord how the damage occurred and was aggressive towards the Landlord. The Landlord states that its agent advised the Landlord that the only way to retain the security deposit was to say that the damage was from a sink backup caused by food scraps in August 2019. The Landlord states that this was refused because it was a lie. The Landlord states that it was then left to complete the inspection alone. The Landlord states that the inspection report was emailed to the Tenant for its signature on November 12, 2020. The Landlord states that while the Tenant acknowledged receipt of the report it did not sign and return the report as requested by the Landlord.

The Tenant states that at the move-out inspection the Landlord's agent became heated. The Tenant states that the agent gave the Tenant the move-out report to sign with no

flooring damage noted. The Tenant states that the Landlord disagreed and wanted the damage noted on the report. The Tenant states that it informed the Landlord that the Tenant was not responsible for the damage. The Tenant states that the Landlord and its agent were not able to agree. The Tenant states that it left the inspection at this point as the situation was awkward.

### Analysis

Section 32(3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results.

There is no dispute that the Tenants reported the leak when the flooring was affected. While the Landlord argues that the Tenants should have noticed the leak earlier from the faucet, the Landlord provided no evidence to support that argument such as a report from the handyman noting the state of the faucet head at the time or that the leak from the faucet was visibly noticeable at the time of its repair. Without this evidence I do not consider the video evidence to be of much weight. The Tenants' evidence is that the leak from the faucet was not noticed. There is no evidence that the Tenants caused the faucet to be damaged. Further, given the Tenants' undisputed evidence of the use of their own fan to dry the wet flooring as directed by the handyman, I consider that this direction was insufficient for proper remediation and likely contributed to further damage to the flooring. The Tenants cannot be held responsible for this as they followed the advice of the agent's handyman and there was no follow-up by the agent to mitigate any further damage caused by a lack of proper drying. I also consider that the Landlord provided evidence that indicates a lack of a timely response by the Landlord's agent to the report of the floor damage. For these reasons I find that the Landlord has not substantiated that the Tenants, either by act or negligence, caused the damage to the flooring. I therefore dismiss the claim for costs to replace the flooring. As the Landlord

has not been successful with its claim, I dismiss the claim for recovery of the filing fee. I order the Landlord to return the security deposit plus zero interest of **\$1,125.00** to the Tenants forthwith.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$1,125.00**. If necessary, 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 Act.

Dated: March 17, 2021

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Residential Tenancy Branch