



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding West Limerick Holdings ULC and  
[tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **MNDL-S, FFL**

### **Introduction**

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by their agent (the "landlord").

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

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

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the deposit for this tenancy?

Is the landlord entitled to recover the filing fee from the tenants?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy began in May 2019 and ended in November 2020. A security deposit of \$937.50 was collected and is still held by the landlord. The parties participated in both a move-in and move-out inspection and prepared a condition inspection report in accordance with the Act. The tenants provided a forwarding address in writing by a letter dated December 1, 2020. The parties were unable to agree on the assessment of damages at the end of the tenancy and the landlord filed the present application on December 6, 2020.

The landlord submits that the rental unit required some cleaning and work to be done including cleaning of floors, blinds, cupboards, walls, baseboards, window sills, toilet and oven. The landlord also submits that the walls required some painting services due to markings and areas where coat hooks were removed. The landlord also submits that some of the lightbulbs in the suite needed to be replaced. The parties agree that some shelving fixtures were removed by the tenant and required reinstallation.

The landlord seeks a sum of \$639.69 for the cost of cleaning and work. The landlord submitted multiple photographs of the suite as well as receipts and invoices for the work done and a copy of the condition inspection report prepared by the parties on November 29, 2020.

The tenant disputes that the rental unit required cleaning at the end of the tenancy. The tenant testified that they have a poor relationship with the landlord and believes that the landlord did not inspect the rental unit fairly or accurately. The tenant submits that they cleaned the rental unit and it was in fine condition. The tenant confirms that they removed shelving fixtures but say they believed they were the tenants' possessions as they purchased them from a previous occupant. The tenant submitted photographs of the suite in support of their position.

### Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In the present case the tenants provided a forwarding address in writing by a letter dated December 1, 2020 and the landlord filed their application for authorization to

retain the deposit on December 6, 2020. I therefore find that the landlord was within the statutory timeline to file their application for authorization to retain the deposit.

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/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.

I find that the landlord has met their evidentiary burden on a balance of probabilities to demonstrate that the rental unit required work to be done due to the tenancy. I find that the photographic evidence of both parties show a rental unit that is in generally acceptable condition but with some deficiencies that require additional work to be done. I do not find the landlord's submission that cleaning of blinds, walls, surfaces and appliances to be excessive but what is reasonable given the state of the rental unit.

I do not find the tenant's assessment that the rental unit requires no further cleaning to be reasonable or supported in the evidence. I find their submission that the landlord has other ulterior motives or that there has been instances of violence to be irrelevant to the matter at hand, not supported in the documentary materials and to have little air of reality.

I find the landlord's identification of issues with the suite and the description of work done to be reasonable, supported in the documentary evidence and proportional to the issues shown. I accept that deep cleaning, paint touch up and replacing burnt out lights was necessary. I further accept the evidence of the parties that the tenant removed a cabinet fixture requiring reinstallation. I do not find the tenant's reasoning that they believed that the fixture was their property to be reasonable or to absolve them from restoring the rental unit to its pre-tenancy condition.

I find the receipts submitted by the landlord to be reasonable and proportional to the damage and work required. I accept that the landlord incurred costs to restore the rental unit to its pre-tenancy state and that the costs are \$639.69. I issue a monetary award in that amount accordingly.

The landlord seeks a monetary award for the cost of registered mail and serving materials on the tenants. I find that these are not losses incurred as a result of any breach on the part of the tenant but simply the costs associated with filing and pursuing an application for dispute resolution. Therefore, I decline to issue a monetary award for these costs.

As the landlord was primarily successful in their application, they are entitled to recover the filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in full satisfaction of the monetary award issued in the landlord's favour. The security deposit for this tenancy is reduced by \$739.69 to \$197.81.

As set out in Residential Tenancy Policy Guideline 17, I order that the landlord return the balance of the deposit of \$197.81 to the tenant.

### Conclusion

The landlord is authorized to make a deduction of \$739.69 from the security deposit for this tenancy. The deposit is reduced by that amount to \$197.81.

I issue a monetary order in the tenants' favour in the amount of \$197.81. The landlord must be served with this Order as soon as possible. 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: March 26, 2021

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Residential Tenancy Branch