



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### **Introduction**

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, 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.

The tenant confirmed receipt of the landlord's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the tenant was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed.

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

Is the landlord entitled to a Monetary Order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to recover the cost of the filing fee for this application?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy for a laneway house originally began as a fixed-term tenancy on March 1, 2014, and reverted to a month-to-month tenancy until it was ended by way of a Mutual Agreement signed on June 30, 2020 ending the tenancy effective July 19, 2020. Monthly rent was set at \$1,344.00 at the end of the tenancy, payable on the first of the month. The landlord testified that the keys were not returned until July 23, 2020, and that they had agreed to the Mutual Agreement to End tenancy despite lack of proper notice on part of the tenant. The landlord testified that the tenant had agreed that the landlord could keep the \$1,100.00 security deposit, which the landlord still holds. No move-in or move-out inspection reports were completed for this tenancy.

A previous hearing was held on October 29, 2020, and the Arbitrator made the following finding about the security deposit:

“I have also reviewed the hand-written note signed by the parties indicating that the tenant agreed that the landlord could keep the security deposit, however that agreement specified that the landlord would return it to the tenant, only if the landlord was able to re-rent for August. **Given that there is a condition on the agreement, I am not satisfied that the tenant forfeited her right to return of the security deposit. ...I order that the landlord has 15 days from today's date to return the security deposit in full or make an Application for Dispute Resolution claiming against the security deposit.**”

The landlord filed this application on November 12, 2020 following that hearing to retain the security deposit in satisfaction of the losses associated with this tenancy. The landlord provided a monetary worksheet detail the following losses, but confirmed in the hearing that their application was only to keep the security deposit of \$1,100.00 and recover the filing fee for this application.

The landlord provided the following list of damages for her monetary claim:

Item	Amount
Deep Cleaning (Floors, Walls, Windows, Blinds)	\$450.00
Painting & Bathroom Re-Furnishing	1,050.00
Laminate Flooring Quote	2,945.00
Filing Fee	100.00
<b>Total Monetary Losses (requesting only \$1,200.00)</b>	<b>\$4,545.00</b>

The landlord testified that the laneway house was brand new at the beginning of the tenancy, and the tenant was the sole and only tenant who had resided in the home. The landlord testified that they had gotten along with the tenant, and had allowed her to end the tenancy after she informed the landlord on June 23, 2020 that she was moving in with her partner.

The landlord testified that they had performed an inspection on their own on July 23, 2020, and was surprised at the damage. The landlord testified that the rental unit was not deep cleaned, and that the unit required painting and touch ups. The landlord testified that the carpet was in a bad state, and needed replacing. The landlord submitted a quotation for laminate flooring in the amount of \$2,945.00 in their evidentiary materials.

The tenant disputes the entire monetary claim, stating that although the carpet was brand new, there was an installation issue which caused a fold in the carpet. The tenant testified that they had left the home in immaculate condition, and submitted photos in their evidentiary materials.

### **Analysis**

I note that the landlord is still in possession of the tenant's security deposit of \$1,100.00. I note that an Arbitrator had previously made a finding that the tenant did not forfeit their right to the return of their deposit, and that the landlord had 15 days to return the deposit, or file an application to claim against the deposit. As an Arbitrator had previously decided that the tenant did not forfeit their security deposit, I find that the preliminary issue of whether the tenant had forfeited their deposit is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again. As the landlord filed their application within the 15 days required, I will make a finding as to the landlord's claim against the deposit, and any portion of the security deposit that remains will be returned to the tenant.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the landlord must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

#### ***Liability for not complying with this Act or a tenancy agreement***

**7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

*(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

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.

Residential Tenancy Regulation further clarifies the requirements for how two opportunities for an inspection must be offered to the tenant:

***Two opportunities for inspection***

**17** *(1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.*

*(2) If the tenant is not available at a time offered under subsection (1),*

*(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and*

*(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.*

*(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.*

Based on the evidence and testimony before me, I find that the landlord did not provide a fair or reasonable opportunity for the tenant to attend the move-out inspection.

As noted in Residential Policy Guideline #17:

*The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:*

- the landlord does not offer the tenant at least two opportunities for inspection as required (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or*
- having made an inspection does not complete the condition inspection report.*

I must note, however, that the above does not exclude the landlord from being able to file a monetary claim for damages as noted in the policy guideline:

*A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:*

- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;*
- to file a claim against the deposit for any monies owing for other than damage to the rental unit;*
- to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy;*
- and*
- to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

Accordingly, I will consider the landlord's monetary claims, and my findings are as follows:

- 1) Painting

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. As per this policy, the useful life of interior paint is four years. I find that the tenant resided in the rental unit for over 6 years, and the interior paint had exceeded its useful life. On this basis, I dismiss the landlord's claim for losses associated with repainting the rental unit.

2) Bathroom re-furnishing / repairs

The tenant disputes causing this damage. In light of the evidence before me, I am not satisfied that the landlord had met the evidentiary burden to support that this claim was due to the tenant's actions rather than regular wear and tear. Accordingly, I dismiss this portion of the landlord's monetary claim without leave to reapply.

3) Damage to Carpet/Laminate Flooring Quotation

The tenant disputes damaging the carpet, stating that there was an issue with the Installation. 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 tenant during this tenancy. Furthermore, the landlord has a duty to mitigate their losses. I find that the landlord has not satisfied the components required for their monetary claim. On this basis, I dismiss this portion of the landlord's monetary claim without leave to reapply.

4) Cleaning

The *Act* requires that the tenant leave the home in reasonably clean condition. In light of the evidence before me, I am not satisfied that the tenant had contravened section 37 of the *Act*. Accordingly, I dismiss the landlord's monetary claim for cleaning without leave to reapply.

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

As the landlord is still in possession of the tenant's security deposit of \$1,100.00, and as the landlord was not successful with their monetary claims, I order that the entire deposit be returned to the tenant.

I note that the landlord had collected a security deposit that exceeded more than half of the monthly rent. For future reference please note the following:

Residential Tenancy Policy Guideline #29 states the following about security deposits:

*The Residential Tenancy Act requires that a security deposit must not exceed one-half of one month's rent. If one or more of the above payments, together with other monies paid, exceeds one-half of one month's rent then the remedies afforded by the Act would be available to a tenant. In addition, the Act provides that a landlord who contravenes these provisions commits an offence and is liable, on conviction, to a fine of not more than \$5,000.*

**Conclusion**

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

I issue a Monetary Order in the amount of \$1,100.00 in the tenant's favour for the return of their security deposit. 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 6, 2021

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Residential Tenancy Branch