



# 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 award for damages and loss pursuant to section 67;
- Authorization to retain the deposits for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with the notice of application and evidence by registered mail in accordance with the Substituted Service Decision of the Branch dated April 12, 2021 on April 13, 2021. The landlord submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on April 18, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord testified that the figure in their application is based on estimates and they have since received invoices and receipts for the actual amount of their losses. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as obtaining a more accurate figure with additional evidence is reasonably foreseeable, I amend the landlord's Application to increase the landlord's monetary claim from \$1,728.74.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?  
Is the landlord entitled to retain the security deposit for this tenancy?  
Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

This tenancy began in December 2019 and ended in December 2020. The monthly rent at the end of the tenancy was \$950.00 payable on the first of each month. The tenancy agreement also provides that the tenant is responsible for paying 35% of the electrical and water utilities for the property. There was an earlier hearing under the file numbers on the first page of this decision in which the landlord was authorized to retain \$100.00 of the security deposit. The landlord currently holds a security deposit of \$400.00.

The tenant did not participate in a move-out inspection of the rental suite. The landlord provided the tenant multiple opportunities and issued a Notice of Final Opportunity for Inspection in an attempt to schedule a date and time. The tenant did not participate in a move-out inspection and the landlord completed a condition inspection report in the tenant's absence.

The landlord found the rental unit required some cleaning, garbage disposal and maintenance work to restore to its pre-tenancy condition. The landlord submitted into evidence photographs of the suite, the completed condition inspection report and invoices for the work performed.

The landlord further submits that the tenant failed to pay their portion of utilities as required under the tenancy agreement and that there is an arrear for this tenancy.

The landlord seeks a monetary award of \$1,728.74 for their damages and loss. I note that the Monetary Order Worksheet does not include a claim for unpaid utilities but does claim for filing fees for their previous application, which were awarded in the previous decision.

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/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 there was a previous decision pertaining to the recovery of the filing fee from an earlier application and consequently I dismiss this claim without leave to reapply.

I am satisfied that the tenant left the rental unit in a state of disarray necessitating some work and maintenance. I find the condition inspection report to be sufficient evidence of the state of the rental unit and the invoices and receipts describe work that is proportional and reasonable based on the damages noted. I am satisfied with the landlord's evidence including photographs, receipts and their undisputed testimony that they took reasonable measures to restore the rental unit to its pre-tenancy condition. Based on the receipts, invoices and work logs I am satisfied that the total amount of the landlord's losses are \$1,528.74 and issue a monetary award in that amount accordingly.

As the landlord was successful in their application they are entitled to recover the filing fee for this application.

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 partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary award of \$1,228.74 in the landlord's favour on the following terms:

Item	Amount
Damage and Loss for Tenancy	\$1,528.74
Filing Fees	\$100.00
Less Security Deposit	-\$400.00
<b>TOTAL</b>	<b>\$1,228.74</b>

The tenant must be served with this Order as soon as possible. Should the tenant 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: May 31, 2021

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Residential Tenancy Branch