



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY  
MANAGEMENT and [tenant name suppressed to protect privacy]

## **DECISION**

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

### **Introduction**

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

- a monetary order for damages and loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant 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 parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

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 security deposit for this tenancy?

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

### 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 periodic tenancy began in September 2019 and ended in January 2021. The rental unit is a A security deposit of \$1,400.00 was paid at the start of the tenancy and is still held by the landlord. The parties agree that there is an arrear of \$100.00 for the tenancy arising from late fees chargeable under the tenancy agreement.

The parties prepared a condition inspection report at the start and end of the tenancy. The landlord submits that the rental unit required some cleaning, maintenance and work to be done at the end of the tenancy. The landlord submitted invoices for the work, photographs of the suite and the condition inspection report completed by the parties. The condition inspection report is signed by the tenant indicating they agree that the report fairly represents the condition of the rental unit and that they agree to deductions from their security deposit for cleaning of window blinds and carpet cleaning. The landlord submits that the total cost of the work is \$1,693.93.

The tenant testified that they disagree with the landlord's assessment of the unit condition and believe no work was necessary. Despite having signed the move-out condition inspection report and indicating that they agree to deductions from the security deposit for cleaning of the blinds and closets, the tenant now testified that they disagree with any deductions and that the rental unit required no work.

### 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.

As the parties agree that there is an arrear of \$100.00 for late fees incurred during the tenancy, I find the landlord has met their evidentiary onus and issue a monetary award in that amount accordingly.

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. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

In the matter at hand the parties completed a move-out condition inspection report on February 2, 2021 and the tenant provided in writing that they agree to a deduction from the deposit the costs of cleaning for the blinds and carpet. While the tenant now submits that they did not agree to any deduction, I find the documentary evidence to be clear. I find the tenant's present testimony, contradicting the documentary evidence to be insufficient to find that the landlord did not have written authorization from the tenant to withhold the costs of cleaning from the security deposit.

I am satisfied with the preponderance of evidence by the landlord including the signed condition inspection report, photographs of the suite, their forthright testimony and detailed invoices that the work performed on the rental unit was for issues agreed upon or reasonable for the issues noted. I find the nature and amount of the costs incurred to be proportional and reasonable for the issues identified. I therefore find that the landlord has established their claim on a balance of probabilities and issue a monetary award in the amount of \$1,693.93 accordingly.

As the landlord was successful in their application they are entitled to recover the filing fees for their 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 order in the landlord's favour in the amount of \$493.93 on the following terms:

<b>Item</b>	<b>Amount</b>
Rental Arrear	\$100.00
Damages and Loss	\$1,693.93
Filing Fee	\$100.00
Less Security Deposit	-\$1,400.00
<b>TOTAL</b>	<b>\$493.93</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: June 29, 2021

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Residential Tenancy Branch