



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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties participated in the teleconference. At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns.

The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?  
Is the landlord entitled to retain all or a portion of the tenant's security and pet deposits in satisfaction of the monetary award requested?  
Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord's testimony is as follows. The tenancy began on November 1, 2019 and ended on November 1, 2020. The tenants were obligated to pay \$1200.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$600.00 security deposit and \$600.00 pet deposit. The landlord testified that the tenants placed some decorative gravel on the property with her permission but did not return it to its original condition at the end of the tenancy. The landlord testified that the tenants made some alterations to two electrical receptacles in the unit but were done incorrectly. The landlord seeks \$600.00 to return the yard to its condition prior to the tenants moving in and \$95.30 to correct the electrical issue.

The landlord testified that the tenant refused to participate in the move out inspection despite having from November 3 to November 13, 2020 to either correct issues that they were informed about or agree to them. MD testified that the reason the landlord filed this application was because the tenant did not have the three pets as agreed to but on average at least five and at times seven.

The tenant gave the following testimony. DC testified that she had the landlord's permission to make alterations to the backyard. DC testified that the changes were enhancements to the property and that the landlords found so impressive, they hired the tenant's friend that did the work to do some work for them. The tenant testified that the electrical work was done by a qualified electrician and that it was a matter of safety as the receptacles were sparking. DC testified that the matter was taken care of "around the middle" of the tenancy and that it wasn't an issue until after the tenancy. DC testified that the landlord conducted the inspection without her and wasn't given proper notice to participate.

Analysis

I make the following findings on a balance of probabilities and based on the evidence of both parties. The tenancy ended on November 1, 2020. The tenants provided their

written forwarding address to the landlords on November 3, 2020, by way of a letter given to the landlord. The landlord did not have written permission to retain any amount from the tenants' security or pet deposits. The landlords applied to retain the deposit on November 14, 2020, which is within 15 days of the later date of November 18, 2020.

However, I find that the tenants are entitled to double the value of their security and pet deposit. I find that the landlords' right to claim against the security deposit for damages was extinguished for failure to complete move-out condition inspection report, as required by section 36 of the *Act*.

MD gave testimony that a series of text messages were exchanged with the tenant in attempts to arrange a move out inspection that went ignored. MD testified that none of the offered dates and times for the move out inspection was offered in writing.

Residential Tenancy Branch Regulation 17 addresses the issue before me as follows:

**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.

In addition, section 36 of the *Act* states the following:

**Consequences for tenant and landlord if report requirements not met**

**36** (2)Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 35 (2) [2 opportunities for inspection],
- (b) having complied with section 35 (2), does not participate on either occasion, or
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the above, I must issue a monetary order to the tenants for \$2,400.00.

Although the landlords right to the security and pet deposit has been extinguished and that the tenants are entitled to return to double those amounts, it does not preclude the landlord to pursue a monetary order separate and apart from those deposits.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

#### **Electrical Repair - \$95.30**

KH did not dispute that DC had advised her about issues with the receptacles or any problem for the tenant to have those repaired. DC testified that the repair was done during her tenancy and was required because the receptacle was sparking and was a safety issue. DC testified that KH was quite relieved that the problem was resolved. KH did not raise any issues with the repair until after the tenancy ended. The landlord has failed to provide sufficient evidence to show that the tenant acted recklessly or negligently, or in contravention of the *Act*, accordingly; I dismiss this portion of the landlord's application.

Yard Work - \$600.00

KH testified that she gave verbal authorization to allow the tenant to put the gravel in the yard but there was an expectation that it be returned to its original condition. DC testified that at no time was there an agreement or requirement to return the yard back to its original condition as the tenant had improved the condition of it. As noted above, it's the applicants burden to provide sufficient evidence to be successful in their application. KH was unable to provide sufficient evidence to show that there was a requirement to return the yard to its original state at the end of the tenancy, accordingly; I dismiss this portion of the landlord's application.

Conclusion

I grant the tenant an order under section 67 for the balance due of \$2400.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord's application is dismissed in its entirety without leave to reapply.

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 28, 2021

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Residential Tenancy Branch