



# 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* ("Act") for:

- a monetary order for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he is one of the owners of the rental unit. This hearing lasted approximately 58 minutes.

At the outset of this hearing, I informed both parties that they were not permitted to record the hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules"). The landlord and the tenant both affirmed under oath that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

The tenant stated that he personally served his evidence on July 6, 2021, to the landlord on the same CD that the landlord provided evidence to him, in a separate folder from the landlord's evidence folder. The landlord stated that he received the same CD that he gave to the tenant with his own evidence, not any additional evidence folder from the tenant.

I did not consider the tenant's evidence in my decision. The tenant failed to confirm that the landlord could gain access to his digital evidence on the CD, contrary to Rule 3.10.5 of the RTB *Rules*. Further, the tenant's evidence was deemed to be received late by the landlord on July 6, 2021, less than 7 days prior to this hearing, not including the service or hearing dates, contrary to Rule 3.15 of the RTB *Rules*.

#### Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit and for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit?

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

#### Background and Evidence

While I have turned my mind to the landlord's evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy ended on January 31, 2021. A written tenancy agreement was signed by both parties. Monthly rent in the amount of \$1,700.00 was payable on the first day of each month. A security deposit of \$850.00 was paid by the tenant and the landlord continues to retain this deposit in full. No move-in or move-out condition inspection reports were completed for this tenancy. The tenant provided the landlord with a written forwarding address by way of sending a letter, dated February 9, 2021, by registered mail, which was received by the landlord a few days after the above date. The landlord did not have written permission to keep any amount from the tenant's security deposit. The landlord's application to retain the tenant's security deposit was filed on February 23, 2021. The rental unit is a three-bedroom townhouse.

The landlord stated that this tenancy began on November 1, 2018, while the tenant said that it was on November 4, 2018.

As per his application, the landlord seeks a monetary order of \$3,800.00, to retain the tenant's security deposit of \$850.00, and to recover the \$100.00 application filing fee. The tenant disputes the landlord's application.

The landlord initially applied online on the RTB website for a monetary order of \$1,840.00 and later submitted written evidence seeking \$3,800.00. The tenant confirmed that he received the landlord's evidence indicating the higher amount of \$3,800.00. Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase his monetary claim from \$1,840.00 to \$3,800.00. The tenant received the landlord's updated evidence and had notice of the increased monetary claim, even though the landlord did not submit an amendment document to his application.

The landlord testified regarding the following facts. The landlord's photographs and videos show the condition of the rental unit after the tenant moved out. The tenant told the landlord when he moved out, that the rental unit was as clean as it could be, and it could not be any cleaner. The tenant admitted to the landlord that his wife had back pain. The tenant did not clean the rental unit before moving out. The landlord submitted a statement from the person renting the unit before the tenant, regarding the condition of the unit before the tenant moved into it. The landlord submitted a statement from his handyman, regarding the condition of the rental unit. The landlord submitted a cleaner's bill. The landlord talked to the tenant before the hearing and was unable to settle these issues. The landlord submitted proofs of service. The landlord did not have time but went later to inspect the rental unit with the tenant and two other people but did not fill out a report.

The tenant testified regarding the following facts. The landlord is a licensed realtor. There is no move-in report to show the condition of the rental unit. The landlord took photographs of the rental unit at move-out, when the tenant was not present. The tenant asked to meet the landlord at the time he was moving out, but the landlord did not show up until hours later. The landlord refused to inspect the upstairs of the rental unit with the tenant when he moved out. The tenant and his wife cleaned the rental unit to the best of their ability and left it in better condition than when they moved into the unit. The tenant told the landlord that he was willing to clean the unit again if he wanted. The tenant did "Indian cooking" inside the rental unit and the kitchen fan was not strong enough; the landlord was supposed to replace it with a stronger fan. The

tenant allowed the landlord to do open houses and show the rental unit to prospective tenants during the covid-19 pandemic, when he did not have to agree to do so.

### Analysis

#### Legislation and Rules

During the hearing, I repeatedly notified the landlord that as the applicant, he was required to present his application, including his evidence and claims.

The following RTB *Rules* state, in part:

*7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

*7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

I find that the landlord did not properly present his evidence, as required by Rule 7.4 of the RTB *Rules*, despite having the opportunity to do so during the hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*. During the hearing, the landlord failed to properly go through his specific claims and the amounts for each claim.

The hearing lasted 58 minutes, so the landlord had ample opportunity to present his application. However, the landlord only mentioned the existence of photographs, videos and witness statements but failed to go through these or other evidence in any specific detail during the hearing. I provided the landlord with multiple opportunities to present his evidence and claims and respond to the tenant's submissions. I repeatedly asked the landlord if he had any other information to present during this hearing.

Both parties spent most of the hearing time arguing with each other about irrelevant information, rather than providing relevant testimony regarding this application. Both

parties were reading out their WhatsApp messages to each other and arguing about the time that the messages were sent and received by each party.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

### Findings

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony of both parties and the landlord's evidence.

I dismiss the landlord's application of \$3,800.00 without leave to reapply. This includes \$900.00 for a loss of rent for 15 days, \$400.00 for a cleaner's bill, \$300.00 for paint damage, \$2,000.00 for a loss of potential revenues for 10 months, \$200.00 for stove top destruction.

The above descriptions and amounts were noted in the landlord's monetary evidence but were not reviewed by the landlord during the hearing. The landlord did not explain these amounts at all during this hearing, nor did he review any receipts, invoices or other documentary evidence to substantiate these claims.

The landlord submitted an invoice for \$420.00 for cleaning, with a balance due, and no proof of payment such as a receipt, bank document, cancelled cheque or other documentary evidence to show if, when or how any payment was made. The landlord did not submit any other receipts, invoices or estimates to substantiate his other claims for painting and stove top damage.

I also find that the landlord cannot prove the condition of the rental unit when the tenant moved in or out, since the landlord did not conduct move-in or move-out condition inspection reports with the tenant, as required by sections 24 and 36 of the *Act*.

Therefore, I cannot determine what damages, if any, were pre-existing when the tenant moved in, and what damages, if any, were caused by the tenant when he moved out. The landlord did not indicate the age of the paint or the stove inside the rental unit, for me to determine its useful life as per Residential Tenancy Policy Guideline 40.

The landlord did not refer to or explain his loss of rent or revenue claims at all during this hearing. The landlord did not provide any documentary evidence such as a new tenancy agreement to show if he suffered any rent or revenue losses. During the hearing, the landlord agreed with the tenant that he re-rented the rental unit to new tenants for a higher rent of \$1,900.00 per month. Therefore, I find that the landlord made a rent profit, rather than suffering a loss of rent or revenue.

As the landlord was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the tenant.

#### *Tenant's Security Deposit*

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the 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)(b) of the *Act*, equivalent to double the value of the 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 deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The landlord continues to hold the tenant's security deposit of \$850.00. Over the period of this tenancy, no interest is payable on the deposit. I find that the landlord did not have written permission to keep any amount from the tenant's security deposit.

I find that the tenant provided a written forwarding address to the landlord on February 9, 2021, by way of a letter sent by registered mail, which the landlord said he received. I find that the landlord applied to retain the tenant's security deposit within 15 days of February 9, 2021, the later forwarding address letter date, as this application was filed on February 23, 2021.

The landlord's right to retain the tenant's security deposit for damages was extinguished for failure to complete move-in and move-out condition inspection reports, as required by sections 24 and 36 of the *Act*. However, the landlord also applied for other costs, aside from damages, including rent losses, as noted in his application. Therefore, I find that the tenant is not entitled to the return of double the value of his security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is entitled to the return of his full security deposit of \$850.00 from the landlord. The tenant is provided with a monetary order for same. Although the tenant did not apply for his security deposit return, I am required to consider it on the landlord's application to retain it, as per Residential Tenancy Policy Guideline 17.

### Conclusion

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

I issue a monetary order in the tenant's favour in the amount of \$850.00 against the landlord. 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: July 13, 2021

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Residential Tenancy Branch