



# 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 was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on March 09, 2021 (the “Application”). The Landlord applied as follows:

- For compensation for damage caused by the tenant, their pets or guests to the unit or property
- To keep the security and pet damage deposits
- To recover the filing fee

The Landlord appeared at the hearing. The Tenant appeared at the hearing with their daughter, A.K., who spoke for the Tenant throughout the hearing. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

At the outset of the hearing, the Landlord asked to withdraw the request for \$500.00 for damage to the floor of the rental unit. The Landlord explained that both parties have looked into having the damage repaired and it is going to cost more than originally anticipated and sought in the Application. I allowed the Landlord to withdraw the request and told the Landlord they can re-apply for compensation for damage to the floor when they have the necessary documentation to support the claim.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence. A.K. confirmed receipt of the hearing package and stated that there was no issue with the timing of service of the hearing package. A.K. testified that the Landlord’s evidence was received the morning of the hearing. The Landlord had submitted the following evidence:

- A Condition Inspection Report (“CIR”)
- An invoice for ceiling repair

- An invoice for cleaning services
- A Monetary Order Worksheet
- Two tenancy agreements

A.K. agreed the Tenant had previously received the following:

- The Condition Inspection Report ("CIR")
- The invoice for ceiling repair
- The Monetary Order Worksheet

A.K. confirmed that the Tenant was prepared to deal with the Application on the hearing date despite the timing of service of the Landlord's evidence and therefore I proceeded with the hearing and did not address this issue further.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to keep the security and pet damage deposits?
3. Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Cleaning	\$630.00
2	Blinds	\$200.00
3	Damaged floor	Withdrawn
4	Ceiling leak	\$1,506.75
5	Track light repair	\$150.00
6	Battery for smoke alarm	\$8.00
7	Replacement light bulbs	\$30.00
8	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$2,624.75</b>

Two written tenancy agreements were submitted as evidence and the parties agreed they are accurate. The tenancy started August 01, 2019. Rent in the last tenancy agreement was \$2,500.00 due on the first day of each month. The Tenant paid a \$1,300.00 security deposit and \$1,300.00 pet damage deposit.

The parties agreed the tenancy ended February 28, 2021.

### ***Settlement Agreement***

During the hearing, I raised the possibility of settlement pursuant to section 63(1) of the *Residential Tenancy Act* (the "Act") which allows an arbitrator to assist the parties to settle the dispute.

I explained the following to the parties. Settlement discussions are voluntary. If they chose not to discuss settlement that was fine, I would hear and decide the matter. If they chose to discuss settlement and did not come to an agreement that was fine, I would hear and decide the matter. If they did come to an agreement, I would write out the agreement in my written decision. The written decision would become a final and legally binding agreement and the parties could not change their mind about it later.

The parties agreed to discuss settlement and a discussion ensued; however, the parties did not come to an agreement and I proceeded with the hearing.

During the hearing, the parties referred to prior agreements between them and it became clear that the Tenant was agreeing to pay for most of the damage noted on the Monetary Order Worksheet. Given this, I went through the Monetary Order Worksheet item by item with the Tenant and A.K. and A.K. confirmed the Tenant was agreeing to pay the following to the Landlord:

- #2 Blinds \$200.00
- #4 Ceiling leak \$1,506.75
- #5 Track light repair \$150.00
- #6 Battery for smoke alarm \$8.00
- #7 Replacement light bulbs \$30.00
- **Total = \$1,894.75**

I told the parties the above would be dealt with in the decision by way of a settlement agreement and I would decide the remaining issues which were whether the Landlord is entitled to compensation for cleaning and entitled to recover the filing fee. The parties

confirmed their understanding of how the decision would be made and agreed with the decision being part settlement and part a decision made by me. The Tenant confirmed the \$1,894.75 could be kept from the security and pet damage deposits. The Tenant confirmed they were seeking the remainder of the security and pet damage deposits, being \$705.25, back. The parties confirmed they were agreeing to the settlement agreement voluntarily.

### ***Security and pet damage deposits***

The parties agreed the Tenant provided their forwarding address on the CIR on February 28, 2021.

The Landlord acknowledged they did not have an outstanding monetary order against the Tenant at the end of the tenancy.

I asked the Landlord if the Tenant agreed in writing at the end of the tenancy that the Landlord could keep some or all of the security or pet damage deposits. The Landlord took the position that the Tenant did; however, upon further explanation and discussion, the Landlord acknowledged the Tenant did not state in writing that the Landlord could keep a specific amount of the security or pet damage deposits.

The parties agreed the CIR in evidence is accurate.

The Landlord testified that the pet damage deposit was kept in relation to the request for compensation for cleaning.

The Tenant and A.K. disagreed that the Landlord was entitled to keep the pet damage deposit for cleaning and testified that they cleaned the carpet at the end of the tenancy and there was no pet damage.

### ***Cleaning***

The Landlord testified as follows in relation to the request for compensation for cleaning. The Tenant was supposed to leave the rental unit clean. The Tenant had asked the Landlord to arrange for cleaners and stated that the Tenant would pay for the cleaners. The Landlord did arrange for cleaners. Three cleaners attended and cleaned the entire rental unit. The Tenant knew the cost of cleaning would be \$60.00 per hour.

The Tenant and A.K. testified as follows. The Landlord wanted to have cleaners that the Landlord trusted clean the rental unit and the Tenant agreed to this request. The rental unit was clean at the end of the tenancy. The cost for cleaning now claimed is different from what the Tenant was previously told, which was \$60.00 per hour for five hours for a total of \$300.00. The Tenant expected to pay \$300.00 to \$350.00 for cleaning.

### ***Evidence***

As stated, the Landlord submitted the following documentary evidence:

- A Condition Inspection Report ("CIR")
- An invoice for ceiling repair
- An invoice for cleaning services
- A Monetary Order Worksheet
- Two tenancy agreements

### **Analysis**

#### ***Security and pet damage deposits***

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security and pet damage deposits if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Based on the CIR, I find the Tenant participated in the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security or pet damage deposits pursuant to sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security or pet damage deposits pursuant to sections 24 or 36 of the *Act* because extinguishment only relates to claims for damage to the rental unit and the Landlord has claimed for cleaning.

I accept the testimony of the parties that the tenancy ended February 28, 2021.

I accept the testimony of the parties that the Tenant provided their forwarding address on the CIR on February 28, 2021.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenant's forwarding address in writing to repay the security and pet damage deposits or file a claim against them. Here, the Landlord had 15 days from February 28, 2021. The Application was filed March 09, 2021, within time.

However, Policy Guideline 31 deals with pet damage deposits and states:

The landlord may apply to an arbitrator to keep all or a portion of the deposit **but only to pay for damage caused by a pet**. The application must be made within the later of 15 days after the end of the tenancy or 15 days after the tenant has provided a forwarding address in writing. (emphasis added)

The Landlord testified that the pet damage deposit was kept for cleaning costs. The Tenant and A.K. disputed that the cleaning related to pet damage. This is the Landlord's Application and the Landlord has the onus to prove the claim. I am not satisfied based on the evidence provided that the cleaning involved pet related damage as the parties disagreed about this and the documentary evidence does not support this. In the circumstances, I am not satisfied the Landlord was permitted to keep the pet damage deposit. Therefore, the Landlord had to return the pet damage deposit within 15 days of February 28, 2021. The Landlord did not do so and therefore failed to comply with section 38(1) of the *Act* in relation to the pet damage deposit.

Pursuant to section 38(6) of the *Act*, the Landlord must return double the pet damage deposit to the Tenant. Pursuant to Policy Guideline 17 at page three, the doubling does not include amounts the Tenant has agreed the Landlord can keep. Here, the Tenant has agreed to the Landlord keeping \$594.75 of the pet damage deposit. Therefore, \$705.25 of the pet damage deposit remains and is doubled to equal \$1,410.50 which must be returned to the Tenant.

I note that I am not satisfied the Tenant agreed to the Landlord keeping a specific amount of the security or pet damage deposits at the end of the tenancy because there is no documentary evidence before me showing this and because the Landlord acknowledged there was no specific amount agreed upon.

### ***Cleaning***

Section 37 of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

I am satisfied based on the testimony of both parties that the Tenant agreed to pay for cleaners to clean the rental unit at the end of the tenancy. The issue is the cost of cleaning.

I am not satisfied the Tenant agreed to pay \$630.00 for cleaning because there is no documentary evidence before me showing this.

I am not satisfied the Landlord is entitled to \$630.00 for cleaning because the documentary evidence does not support that \$630.00 worth of cleaning was required at the end of the tenancy. The CIR does not note that the rental unit was dirty at the end of the tenancy. There are no photos before me showing the state of the rental unit at the end of the tenancy. In the absence of further evidence, I am not satisfied the Landlord is entitled to \$630.00 for cleaning.

The Tenant testified that they expected to pay \$300.00 to \$350.00 for cleaning and therefore I am satisfied the Landlord is entitled to \$350.00 for cleaning.

### ***Settlement Agreement***

Pursuant to the agreement of the parties, the Tenant owes the Landlord \$1,894.75 and the Landlord can keep this amount from the security and pet damage deposits.

### ***Filing fee***

Given the Landlord was partially successful in the Application, the Landlord is entitled to recover the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

### **Summary**

The Landlord is entitled to the following compensation:

<b>Item</b>	<b>Description</b>	<b>Amount</b>
1	Cleaning	\$350.00
2	Blinds	\$200.00
3	Damaged floor	Withdrawn
4	Ceiling leak	\$1,506.75
5	Track light repair	\$150.00
6	Battery for smoke alarm	\$8.00
7	Replacement light bulbs	\$30.00
8	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$2,344.75</b>

Given the finding in relation to the pet damage deposit, the following is a calculation of what must occur with the security and pet damage deposits:

- The Landlord holds a \$1,300.00 security deposit
- The Landlord holds a \$1,300.00 pet damage deposit
- However, \$705.25 of the pet damage deposit has been doubled and therefore the Landlord is considered to hold \$2,005.25 as a pet damage deposit
- Therefore, the Landlord is considered to hold \$3,305.25 in deposits
- The Landlord is permitted to keep \$2,344.75 of this \$3,305.25 in deposits pursuant to section 72(2) of the *Act*
- The Landlord must return \$960.50 to the Tenant

The Tenant is issued a Monetary Order for \$960.50.

### **Conclusion**

The Landlord is considered to hold \$3,305.25 in deposits. The Landlord can keep \$2,344.75 of the deposits. The Landlord must return \$960.50 to the Tenant. The Tenant is issued a Monetary Order for \$960.50. If the Landlord does not return \$960.50 to the Tenant, this Order must be served on the Landlord. If the Landlord fails to comply with this Order, it 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 *Act*.

Dated: August 18, 2021

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Residential Tenancy Branch