



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNDL-S, FFL

### Introduction

This hearing dealt with cross-applications pursuant to the *Residential Tenancy Act* (“Act”) the landlord applied 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 and pet deposits 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.

The tenant applied for:

- authorization to obtain a return of all or a portion of their security and pet deposits pursuant to section 38.

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. The tenant acknowledged that she received the landlord’s evidence. 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 the 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. 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.

### Preliminary Issue – Tenants Evidence

The tenant testified that she submitted several hundred photos to the Branch but not to the landlord. The tenant submits that if the landlord wanted them, the landlord could have asked for them. Residential Tenancy Rules of Procedure Rule 3.15 addresses the issue as follows:

3.15 Respondent's evidence provided in single package.

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package. The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

As the tenant has not served the landlord in response to his claim, the photos she has submitted are not admissible, and have not been considered in making this decision.

### Issue to be Decided

Is the landlord entitled to a monetary award for loss and damages arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security and deposits in partial satisfaction of the monetary award requested?

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

Is the tenant entitled to the return of all or a portion of their pet damage and security deposits?

### Background, Evidence

The landlord's testimony is as follows. The one-year tenancy began on June 1, 2020 but ended early on March 30, 2021. The tenant was obligated to pay \$950.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$475.00 security deposit and a pet deposit of \$950.00. DH testified that the tenant gave notice on March 9, 2021 that she would be moving out by the end of March. DH testified that the tenant damaged the carpet and left them dirty along with not cleaning the kitchen and bathroom. AN testified that he incurred \$700.31 to repair and clean the carpet along with cleaning the suite.

AN testified that he is seeking rental loss for the month of April 2021. AN testified that although he rented the unit for April 1, 2021 the incoming tenant was originally interested in another unit he had but chose the subject unit because it had a balcony. AN testified that he feels the tenant should be responsible for the rental loss for the other unit. DH testified that the tenant paid a pet deposit for her pet, but then approached them to have another dog in the unit. DH testified that it was at the tenant's behest that the landlord take another pet deposit, not the landlord.

The tenant gave the following testimony. The tenant testified that the landlord was being unreasonable at the move out inspection and that they could not agree to the condition of the unit. The tenant testified that the move in condition report states that the carpets were old and stained and in poor condition. The tenant testified that the landlord has not provided enough proof to prove their claim and she wants all her deposits back.

### Analysis

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 each party's claim and my findings around each are set out below.

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.

Firstly, I address the landlords claim as follows.

*Carpet Repair, Carpet Cleaning and Deodorizer, and suite cleaning \$700.31.*

The landlord is not entitled to this claim for the following reasons. The move out condition inspection report was left blank. The landlord failed to fill out the condition inspection report at move out to provide a “before and after” snapshot to show the changes, if any. In addition, the photos provided by the landlord were of poor quality and limited in its weight. The landlord failed to provide sufficient evidence of the condition of the unit at move out versus move in. Based on the insufficient evidence before me, I dismiss this portion of the landlords’ claim.

*Loss of Rent April - \$950.00*

The landlord rented the unit for April 1, 2021. The landlord did not suffer any rental loss. The landlord’s submission that the incoming tenant originally wanted a different unit but then chose this one still means that “technically” the tenant must pay for April is illogical and unjustified, accordingly; I dismiss this portion of the landlords’ claim.

As the landlord has not been successful in their application, they are not entitled to the recovery of the filing fee. Furthermore, as the landlord is not entitled to any monies, they must return all the deposits to the tenant in the amount of \$1425.00.

*Conclusion*

I order that the landlord return the \$475.00 security deposit and the \$950.00 pet deposit back to the tenant. I grant the tenant an order under section 67 for the balance due of \$1425.00. This order may be filed in the Small Claims 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: September 09, 2021

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Residential Tenancy Branch