



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

On June 16, 2021, the Landlord made an Application for a Dispute Resolution Proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards that debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord and Tenant J.E. attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could 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 Landlord advised that he only served one Notice of Hearing and evidence package to the Tenants by registered mail on or around July 12, 2021. The Tenant confirmed that they received this package on approximately that date and that he had no position with respect to both of them only being served one Notice of Hearing and evidence package. Despite the Landlord not serving a separate Notice of Hearing and evidence package to each Tenant in accordance with Rule 3.1 of the Rules of Procedure, as the Tenant was prepared to proceed, I am satisfied that the Tenants have been duly served the Notice of Hearing and evidence package.

However, the Tenant advised that they did not receive any of the Landlord’s pictures in

the evidence package. The Landlord confirmed that he did not serve these pictures to the Tenants. As such, I have excluded the Landlord's picture evidence and will not consider it when rendering this Decision. The rest of the Landlord's documentary evidence will be accepted and considered when rendering this Decision.

The Tenant advised that they served their evidence to the Landlord by email on or around December 28, 2021. The Landlord acknowledged that he received this evidence, and he did not have any position with respect to how it was served to him. Based on this undisputed testimony, I am satisfied that the Landlord was duly served the Tenants' evidence. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties 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 Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on March 30, 2018 and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on June 1, 2021. Rent was established at \$1,800.00 per month and was due on the first day of each month. A security deposit of \$900.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties agreed that a move-in inspection report was conducted on March 30, 2018 and that a move-out inspection report was conducted on June 5, 2021. A copy of the signed condition inspection report was submitted as documentary evidence. As well, all

parties agreed that the Tenants provided their forwarding address in writing on the move-out inspection report.

The Landlord advised that he is seeking compensation in the amount of **\$500.00** because the Tenants damaged the flooring and did not fix it at the end of the tenancy. He stated that there were no issues with the flooring at the start of the tenancy and this is consistent with the move-in inspection report. He submitted that the Tenant's wife contacted him approximately a year after the tenancy started and informed him that she had been watering plants inside, which caused the flooring to warp. He stated that he consulted with some industry experts who determined that this damage was likely due to long term water damage. He referenced an invoice submitted to support the cost of the flooring installation of \$420.00; however, he did not submit any evidence of the \$80.00 cost of the new floorboards that he purchased.

After much vague and inconsistent testimony, the Tenant confirmed that they were responsible for damaging the floorboards with water; however, he speculated that it may have come from a water bottle instead of from his wife's plants. He suggested that the floorboards were of low quality because they were purchased on clearance. He stated that he provided the Landlord with a quote to fix this damage during the tenancy, but the Landlord would not accept it as the tradesperson did not appear qualified. As well, the Tenant indicated that it was his belief that the Landlord was responsible for fixing this damage.

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlord must offer at least two opportunities for the Tenants to attend

the move-out inspection.

Section 21 of the *Residential Tenancy Regulations* (the “*Regulations*”) outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenants have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenants must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

As the consistent and undisputed evidence is that both a move-in and move-out inspection report were conducted, I am satisfied that the Landlord has complied with the *Act*. As such, I find that the Landlord has not extinguished the right to claim against the deposit.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy. With respect to the Landlord’s claim against the Tenants’ security deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants’ forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent evidence before me, I am satisfied that the Tenants provided their forwarding address in writing on June 5, 2021. As such, I find that the Landlord’s Application was made within 15 days of this date and consequently, the doubling provisions do not apply to the security deposit in this instance.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenants fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

In addition, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the somewhat contradictory testimony and positions of the parties, I must also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Landlord's claim for compensation in the amount of \$500.00 to repair damage to the flooring of the rental unit, given that the Tenant acknowledged that they were responsible for the water damage, I am satisfied that the floorboard damage was caused by their negligence. As such, they would be responsible for fixing it at the end of the tenancy. Despite the Tenant's suggestion that the floorboards may be of low quality, there is no evidence to support this, and furthermore, this would not change the fact that he confirmed that their actions caused this damage.

When reviewing the Landlord's evidence pertaining to the cost to repair this damage, I accept the Landlord's quote submitted to support this claim. Furthermore, while he did not provide evidence to substantiate the \$80.00 for the cost of the replacement

floorboards, I accept that this testimony, more likely than not, accurately reflects a reasonable price for the cost of replacement boards. As such, I grant the Landlord a monetary award in the amount of **\$500.00** to satisfy this claim.

As the Landlord was successful in his claim, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain a portion of the security deposit in satisfaction of this claim.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Landlord to the Tenants**

Item	Amount
Floorboard repair	-\$500.00
Filing fee	-\$100.00
Security deposit	\$900.00
<b>Total Monetary Award</b>	<b>\$300.00</b>

#### Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$300.00** in the above terms, and 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: January 10, 2022

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Residential Tenancy Branch