



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL, MNSD-DR, FFT

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on July 17, 2021, for:

1. A Monetary Order for damages to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on July 22, 2021, for:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant confirms that Tenant CB is not named as a tenant on the tenancy agreement.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to return of the security deposit?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed facts: The tenancy started on July 1, 2020 and ended on June 30, 2021. At the outset of the tenancy the Landlord collected \$500.00 as a security deposit. Rent of \$1,000.00 was payable on the first day of each month. The Tenant provided its forwarding address on July 7, 2021, and the Landlord received this address. No move-in inspection was offered by the Landlord or completed.

The Landlord states that the Tenant left the unit with damages, including damages from a baby gate, and claims \$500.00 for the cost of repairs. The Landlord states that the baby gate was left improperly installed and that the Landlord had to remove and reinstall the gate for the new tenancy. The Landlord provides an estimate of the repairs as the monetary order worksheet. Some of the items on the estimate for repairs, such as the flooring repairs, have yet to be completed. A new tenancy started July 1, 2021, at the same rental rate. The Landlord provides photos of the damages. The Landlord states that an invoice setting out the payment for the repairs was provided to both the Residential Tenancy Branch and the Tenant.

The Tenant states that they did not cause any damage requiring the repairs listed on the estimate. The Tenant states that the Landlord's agent agreed that the Tenant could leave the baby gate as the new tenants had a baby and wanted the gate.

### Analysis

Section 23(3) of the Act provides that the landlord must offer the tenant at least 2 opportunities, as prescribed, for a move-in inspection and section 23(4) of the Act provides that the landlord must complete a condition inspection report in accordance with the regulations. Section 24(2)(a) of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not comply with section 23 (3) [*2 opportunities for inspection*]. Based on the agreed facts that no move-in inspection was conducted I find that the Landlord failed to make any offers for such inspection and that

the Landlord's right to claim against the security deposit was therefore extinguished at move-in.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 provides that return of double the deposit will be ordered if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act. As the Landlord's right to claim against the security deposit was extinguished at move-in and as there is no evidence that the Landlord could otherwise claim against the security deposit, such as the Tenant's written authorization to do so, I find that the Landlord was required to return the security deposit within 15 days receipt of the forwarding address. The Landlord's right to make its claim for damages was not otherwise affected. Given the undisputed facts that the Landlord did not return the deposit I find that the Landlord must now pay the Tenant double the security deposit plus zero interest of **\$1,000.00**. As the Tenant has been successful with its claim, I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,100.00**.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Given the undisputed evidence that the Landlord agreed that the Tenant could leave the gate, and as there is no evidence that the Tenant was required to ensure anything more than leaving the gate in place, I find that the Landlord has not substantiated that the Tenant caused the Landlord to incur the costs for repairs to the gate.

While the Landlord has evidence of damage for the remaining items, the Landlord does not have any supporting evidence that these damages were caused by the Tenant. The Landlord does not provide a duly completed move-in inspection report to indicate the state of the unit at move-in. Given the Tenant's evidence of not having caused damage to these items, I find on a balance of probabilities that the Landlord has not substantiated the Tenant caused the remaining damages and I dismiss the claim for the cost of the remaining repairs. As the Landlord's claim for costs of repairs have not met with success, I find that the Landlord is not entitled to recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety.

As only Tenant BB is named as a tenant on the tenancy agreement, I make the monetary order in this name only.

#### Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$1,100.00**. If necessary, 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 Act.

Dated: February 02, 2022

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Residential Tenancy Branch