



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNDL-S, FFL**

**MNSDB-DR, FFT, MNDCT**

### **Introduction**

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act (the "Act").

The landlord applied for:

- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant applied for:

- An order for the return of a security deposit and pet damage deposit that the landlord is holding without cause, pursuant to section 38;
- Authorization to recover the filing fee from the other party pursuant to section 72; and
- A monetary order for damages or compensation pursuant section 67.

Both the landlord and the tenant attended the hearing. Both parties acknowledged being served with one another's Notice of Dispute Resolution Proceedings packages and stated they were ready to have the merits of their applications heard.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules"). The parties were informed that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act. Both parties confirmed that they were not recording the hearing.

### **Issue(s) to be Decided**

Is the landlord entitled to compensation for damages done to the rental unit?

Can the landlord retain the tenant's security deposit and pet damage deposit or should they be returned to the tenant?

Can either filing fee be recovered?

### Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The month-to-month tenancy began on February 1, 2015, with rent originally set at \$1,500.00. A security deposit of \$750.00 was collected by the landlord which he continues to hold. The landlord testified that no formal condition inspection report was completed with the tenant at the commencement of the tenancy, although the landlord knew he was supposed to do one with the tenant. The landlord testified that he had photos of the rental unit taken before the tenant moved in, however they were lost on a previous cellphone. A pet damage deposit of \$400.00 was collected when the tenant got a dog.

The tenancy ended on July 31, 2021, after the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use. The landlord and the tenant did an informal "walkthrough" without a condition inspection report being completed. The landlord pointed out damage done to the floors of the unit but no cost to repair it was discussed. The landlord testified that he has extra pieces of unused flooring that he may be able to replace the damaged flooring with, but he has not obtained a quote for the work to be done. The landlord believes he may do the work himself. The landlord testified that the floors were brand new when the tenant moved in, back in 2015. The flooring is a laminate with a printed image of wood over particleboard with an aluminum oxide coating overtop. The useful life of these floors is 15 years.

The landlord testified that the pantry doors were damaged by the tenant and provided photos of the damage. The landlord attributes the damage to the tenant not closing the drawers behind the doors before closing them. This caused the doors to crack and

come apart at the seams. The cost to replace the doors is \$750.00, colour matched to the existing doors. To repair with glue and touch-ups costs \$300.00. The landlord has not done the repairs to the doors or the floors, pending the outcome of this hearing. The landlord testified that the age of the pantry doors is approximately 15 years, with the house being built in 1983 or 1984.

The tenant gave the following testimony. The landlord did not do a condition inspection report with her at the commencement of the tenancy. He had another opportunity to do one with her when she got a dog and paid the pet damage deposit to the landlord, but the landlord did not offer the inspection.

The tenant was present at the “walkthrough” with the landlord. The tenant attributes the damage to the floors and cabinet doors as normal wear and tear. The tenant provided her forwarding address to the landlord via email the morning of the walkthrough, on July 31<sup>st</sup>, which the landlord acknowledges receiving on that date.

#### Analysis – tenant’s claim for return of security deposit

Section 14 of the Residential Tenancy Regulations (“Regs”) states that the landlord and tenant must complete a condition inspection described in section 23 or 35 of the Act [*condition inspections*] when the rental unit is empty of the tenant's possessions unless the parties agree on a different time.

Sections 17 and 18 of the Regs indicate it is the landlord’s responsibility to schedule the inspections and provide a copy to the tenant.

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 inspect the condition of the rental unit with the tenant on the day the tenant is entitled to possession of the rental unit or another mutually agreed day, pursuant to sections 23(1) and 24(2) of the Act.

Sections 38(5) and (6) of the Act state that when the landlord’s right to claim against the security deposit is extinguished, the landlord may not make a claim against it and must pay the tenant double the amount of the security deposit or pet damage deposit, or both, as applicable.

This is further clarified in Residential Tenancy Branch Policy Guideline PG-17 which says, in part C-3:

*Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the*

*return of double the deposit 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;*

At the commencement of the tenancy, the landlord did not pursue a condition inspection of the suite with the tenant, as required by section 23 of the Act. The landlord acknowledged during the hearing that he understood he was supposed to conduct a condition inspection with the tenant at the commencement of the tenancy but chose not to do so because he had (now lost) photographs of the rental unit. Pursuant to section 24(2), the landlord's right to claim against the security deposit was extinguished when the landlord failed to conduct the inspection with the tenant or offer the tenant at least two opportunities for the inspection.

In this case, section 38(6) requires that the tenant's security deposit of \$750.00 be doubled to \$1,500.00 and her pet damage deposit of \$400.00 be doubled to \$800.00 and returned to her. I award the tenant \$2,300.00 pursuant to section 38 of the Act.

#### Landlord's claim for damages

Section 7 of the Act states: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. 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. Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at Part C:

In order to determine whether compensation is due, the arbitrator may determine whether:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement.
2. loss or damage has resulted from this non-compliance.
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

[the 4-point test]

When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, pursuant to section 37(2) of the Act.

Section 21 of the Regs state that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Without the condition inspection report signed by the parties acknowledging the pre-existing conditions of the rental unit when the tenant moved in, the landlord has put himself in a position where he cannot prove, on a balance of probabilities, the nature or extent of the damages caused by the tenant when the tenancy ended. This includes the damage to the cabinet doors alleged by the landlord. A condition inspection report would have a spot for a landlord to indicate whether the cabinet doors were in good, fair or poor condition. I do not have such a reference to deduce the condition of the cabinet doors at the commencement of the tenancy.

The landlord testified that the cabinet doors are at approximately 15 years old. I have not been presented with a preponderance of evidence to the contrary, so I must conclude the cabinets were not pristine when the tenant first moved in. I find that the landlord has not provided sufficient evidence to satisfy me the tenant damaged the cabinet doors beyond reasonable wear and tear during the tenancy and I dismiss this portion of the landlord's claim.

The landlord also seeks compensation for flooring damage. Despite not having the condition inspection report to corroborate this statement, I accept the landlord's testimony that the floors were brand new at the commencement of the tenancy. I do not find this damage to be reasonable wear and tear. I find that the floors were dented and chipped during the tenancy and that the landlord should be compensated for this damage.

The landlord seeks \$250.00 to fix the floors by replacing the damaged floorboards, however the landlord did not provide an estimate or quote for the work to be done. (Point 3 of the 4-point test). I find the landlord has not successfully proven the value of the compensation sought, so I will base my compensation on the fact that the floors

were already 6 years old with a life expectancy of 15 years. I find 40% of the useful life of the flooring has passed and I deduct this amount from the claim sought. [ $\$250.00 - 40\% = \$150.00$ ]. I award the landlord \$150.00 pursuant to section 67 of the Act.

The tenant's award of \$2,300.00 will be reduced by \$150.00 in accordance with the offsetting provisions of section 72 of the Act. [ $\$2,300.00 - \$150.00 = \$2,150.00$ ].

The recovery of the filing fee is at the sole discretion of the arbitrator. As both party's applications were successful to some extent, neither party will recover the filing fee from the other party.

### Conclusion

I issue a monetary order in the tenant's favour in the amount of \$2,150.00.

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: February 28, 2022

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Residential Tenancy Branch