



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

The Landlord seeks to a monetary order for damages to the rental unit and to retain the security deposit pursuant to sections 38 and 67 of the *Residential Tenancy Act* (the “*Act*”). The Landlord also seeks the return of his filing fee pursuant to s. 72 of the *Act*.

J.T. appeared as the Landlord. The Tenant did not appear, nor did someone appear on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord confirmed that he was not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord advised that the Tenant was served with the Notice of Dispute Resolution and evidence by way of registered mail. The Landlord’s evidence includes a registered mail receipt dated September 24, 2021, which the Landlord confirmed was when the package was sent. I find that the Landlord’s application materials were served in accordance with s. 89. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the Landlord’s application materials on September 29, 2021.

Issue(s) to be Decided

- 1) Is the Landlord entitled to a monetary order for damages? If so, can he claim against the security deposit?
- 2) Is the Landlord entitled to the return of his filing fee?

Background and Evidence

The Landlord confirms the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on October 1, 2017.
- The Landlord obtained vacant possession of the rental unit on August 31, 2021.
- A security deposit of \$1,200.00 is held in trust by the Landlord.

The Landlord's written evidence indicates that the Tenant vacated on September 2, 2021.

A copy of the tenancy agreement was put into evidence by the Landlord. The Landlord confirmed that he personally owns the property and that his former property manager was listed as the landlord under the tenancy agreement.

The Landlord's application claims \$5,105.00 in damages were made by the Tenant. The Landlord's evidence includes an estimate of the cost of repairing the rental unit, listing 45 items including the cost of repairing these items. At the hearing, however, the Landlord advises that he seeks \$6,981.00, which he says is the actual cost he incurred in repairing the property. He says that the prior amount was an estimate put together by his former property manager.

The Landlord advises that he has receipts verifying this amount, however, he failed to put those receipts into evidence or serve them on the Tenant. The Landlord described how the rental unit required painting, light replacements, a new fridge, showerhead replacement, dishwasher repair, and deck repair.

A copy of a condition inspection report was put into evidence by the Landlord. It indicates that the move-in inspection was conducted on September 30, 2017 and is signed by the Tenant and the Landlord's agent. The move-out inspection does not appear to have been completed and is not signed by the Tenant, the Landlord, or the Landlord's agent. The Landlord was unable to advise why the condition inspection report was not signed, indicating his former property manager would have handled the

move-out inspection. In the Landlord's written materials, it indicates that the Tenant "rejected to sign on the move out inspection".

The following is noted in the condition inspection report where comments on the move-out condition would be found within the standard form:

The move out condition is according to the pictures and videos that are taken on September 2<sup>nd</sup> 2021.

There is a signature beside the note on the condition inspection report, though it is unclear when the note was made, when it was signed or who signed it.

There are various photographs with notations in the Landlord's evidence marking 45 deficiencies, which is explained to have been the move-out inspection as per the note in the written condition inspection report.

The Landlord was unable to advise when the Tenant provided their forwarding address, though confirmed it had been provided. The Landlord was not clear whether he has returned any of the security deposit.

The Landlord advises that he moved into the rental unit after the Tenant's vacated.

### Analysis

The Landlord claims for damages against the security deposit.

With respect to the Landlord's monetary claim, under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the 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.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

There are significant issues with the Landlord's claim. Rule 2.2 of the Rules of Procedure limits a claim to what is stated in the application. The Landlord applied for a monetary order for damages in the amount of \$5,105.00. The Landlord advises that this amount was determined by his former property manager based on estimates of the damage. At the hearing, the Landlord advanced a monetary claim in the amount of \$6,981.00, which I am told was the actual cost of the repairs. There is no amendment to the Landlord's application to revise his monetary claim, only an amendment to remove the Landlord's agent from the file.

Further, the Landlord advises that there are receipts to justify the amount he seeks, though he failed to put them into evidence and serve them on the Tenant. The Landlord provided minimal submissions on the damage or repairs and the photographs provided do not clearly correspond with the amount claimed by the Landlord at the hearing.

Without considering the other aspects of the four-part test or the restriction of the claim imposed by Rule 2.2 of the Rules of Procedure, I find that the Landlord has failed to prove the value of the damages he says were caused by the Tenant. Vague submissions without supporting documents are insufficient to justify a monetary award. I do not grant any monetary order in the Landlord's favour as I find that he failed to adequately prove his claim by quantifying his claim. I dismiss the Landlord's monetary claim without leave to reapply.

I am cognizant of the Landlord's obligation to return the security deposit under s. 38(1) of the *Act* and Policy Guideline #17 with respect to ordering the return of the security deposit regardless of whether it is the Landlord's application or the Tenant's application. However, it is unclear based on the documentary evidence or from the Landlord's submissions when the Tenant provided their forwarding address. The Landlord acknowledges receiving it but cannot indicate when, though stated that registered mail packaged had been sent to the forwarding address on September 24, 2021. I note that the Landlord's application was filed on September 17, 2021. Without evidence on when the forwarding address was provided, I am uncertain if s. 38(6) applies. Further, the Landlord provided no evidence on whether he does still, in fact, retain the security deposit. I do not have the benefit of the Tenant's evidence confirming any of these details.

In the face of this uncertainty, I decline to grant an order for the return of the security deposit. If it has not been returned, the Tenant is at liberty to apply for its return under s. 38 of the *Act*. I make no findings relevant to the return of the security deposit under s. 38. This decision does not impact any time limitations that may apply under the *Act*.

### Conclusion

The Landlord failed to prove his claim as he failed to provide supporting documents to quantify his purported damages. I dismiss the Landlord's monetary claim without leave to reapply.

I make no orders with respect to the return of the security deposit as I am unable to make the relevant findings necessary under s. 38 of the *Act*. The Tenant is at liberty to apply for the return of the security deposit.

As the Landlord was unsuccessful in his application, I find that he is not entitled to the return of his filing fee. I dismiss his application for the return of his filing fee without leave to reapply.

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: May 10, 2022

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Residential Tenancy Branch