



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

Dispute Codes      **MNDL-S, FFL**

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The parties agreed that the tenancy began on October 1, 2015. Rent in the amount of \$676.00 was payable on the first of each month. The tenant paid a security deposit of \$307.50. The tenancy ended on August 31, 2021.

The parties agreed a move-in inspection report was completed. Filed in evidence is a copy of the move-in inspection report

The landlord testified that the tenant failed to appear at the move-out condition inspection that was scheduled for 4:00 PM on August 28, 2021, and was reconfirmed with the tenant on August 26, 2021, when the tenant returned the keys to the rental unit. The landlord stated that the tenant did not provide a forwarding address until November 10, 2021.

The tenant testified that they did not think it was that important to do the move-out inspection and they tried to call the landlord three times and the landlord did not answer their phone. Filed in evidence is a phone record show the tenant called the landlord on August 30, at 4:33pm, 4:34 pm and 6:22pm. I note this is after the tenant vacated and after the agreed upon inspection date.

The landlord claims as follows:

a.	Damage	\$550.00
b.	Filing fee	\$100.00
	<b>Total claimed</b>	<b>\$650.00</b>

The landlord testified that they have not had the work completed and it was agreed with the new occupant that it would be done in the future. The landlord stated they have not provided any estimates of the actual cost of damage, but state it is reasonable that the repairs would be greater than the amount claimed.

The landlord testified the linoleum floor was scratched and there were gauges in the flooring. Filed in evidence are photographs of the floor.

The landlord testified that the kitchen countertop was destroyed, as something was etched into the surface, there were stains and there was ink on one spot. The landlord stated that they tried to clean the countertop; however, it will have to be replaced. Filed in evidence is a photograph.

The landlord testified that the kitchen refrigerator door was broken and held together with tape and will have to be replaced.

The landlord testified that there was excessive chips in the walls, cabinets and bathroom wall looked like it was damaged by water. Filed in evidence are photographs.

The landlord testified the bathtub was stained and could not get it cleaned.

The landlord testified that the tenant's movers damaged the wall in the hallway.

The tenant testified that the kitchen countertop was really old and hard to keep clean. The tenant stated that the ink mark on the countertop was from them placing a grocery bag on the counter and the ink transferred.

The tenant testified that the refrigerator door was not broken it was part of the shelf in the refrigerator that was taped because it broke during the tenancy due to its age.

The tenant testified that the floor was damaged, and there were lots of chips in the walls, cabinets that were not recorded in the move-in condition inspection report and they took pictures of them on October 5, 2021. The tenant stated that the landlord is claiming for preexisting damages. Filed in evidence are multiple pictures that are date stamped October 5, 2015.

The tenant testified that they left the bathtub clean; however, if there was any staining that would be due to the age of the bathtub.

The tenant testified that the landlord refused to allow the movers to use the elevator and a wall may have been scraped; however, it would cost very little to make the repair.

The landlord argued that the move-in inspection report does not reflect any damages to the rental unit. The landlord confirmed they were not the person that completed the move-in condition inspection report.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

**Residential Tenancy Regulation 21 - Evidentiary weight of a condition inspection report**

**21** 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.

In this case the landlord has submitted a move-in condition inspection which show the rental unit in satisfactory condition; however, the tenant has provided a preponderance of evidence to the contrary that the move-in condition was not accurately recorded.

The tenant's photographs are dated October 5, 2021, five days after the tenancy commenced. The photographs show that the floor was damaged, and the cupboards and walls all had chips and damage to them at the start of the tenancy. While this might not have been reflected in the move-in condition inspection as this could have been considered by the person filing out the report as reasonable wear. However, I find I cannot put any weigh on the move-in condition inspection report.

I find the landlord has failed to prove the damage to the floor, cupboards and walls were caused by the action and neglect of the tenant. The tenant's photograph support they these damages were preexisting.

I am also not satisfied that the tenant caused any damage to the refrigerator. The landlord did not provide a photograph of the alleged broken door handle. The evidence of the tenant was that it was a piece of shelf that broke due to the age of the item.

I am not satisfied that the tenant caused damage to the countertop. While I accept there is some staining; however, that could be due to normal wear and tear and the aging process.

While I accept the tenant's furniture movers may have scraped the wall in the hallway. However, I find without any evidence of the actual value of the repair. I cannot determine the value of the repair.

Based on the above, I dismiss the landlord's application without leave to reapply.

**Consequences for tenant and landlord if report requirements not met**

**24** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) [2 *opportunities for inspection*], and

(b) the tenant has not participated on either occasion.

(2) 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

(a) does not comply with section 23 (3) [2 *opportunities for inspection*],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report **and give the tenant a copy of it in accordance with the regulations.**

In this case, the parties participated in a move-in condition inspection and the report was completed on October 1, 2015. I accept the tenant did not attend the rental unit on August 28, 2021, as scheduled to complete the move-out condition inspection report which is a breach of the Act.

However, I have no evidence before me to determine if the landlord provided the tenant with a copy of the move-in condition inspection report within 7 days after the move-in condition inspection was completed. Therefore, I find without this information I find I cannot determine who extinguished their rights to the security deposit first.

As I have dismissed the landlord's application for damages, I find I must order the landlord to return to the tenant their security deposit of **\$307.50**. Should the landlord failed to return the security deposit to the tenant as I have ordered, I find it appropriate to grant the tenant a monetary order in the above noted amount. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application is dismissed. The landlord is not entitled to recover the cost of the filing fee. The tenant is granted a formal order for the return of the security deposit.

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 Tenancy Act*.

Dated: June 20, 2022

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Residential Tenancy Branch