



# 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 by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended and had opportunity to provide affirmed testimony, present evidence and make submissions.

The hearing process was explained.

The landlord stated they were not recording the hearing.

The landlord provided the email addresses to which the Decision shall be sent.

### *Preliminary Issue – Service*

The landlord provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on

November 19, 2021 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on November 24, 2021.

The landlord submitted the mailing receipt as evidence which included the Canada Post Tracking Number.

Pursuant to the landlord's evidence and sections 89 and 90, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on November 24, 2021.

### Issues

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

### Background and Evidence

The landlord requested compensation for damages done by the tenant to the rented unit and authorization to apply the security deposit to the award.

The landlord provided uncontradicted testimony as the tenant did not attend the hearing. The landlord submitted credible documents in support of the claims.

The landlord submitted a copy of the tenancy agreement. The tenancy began on October 15, 2020, for monthly rental of \$1,850.00 payable on the 15<sup>th</sup> of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$1,000.00 which the landlord holds.

A condition inspection was conducted on moving in and a copy was submitted in evidence signed by both parties. The report indicated that the unit was in good condition in all relevant aspects.

The tenant moved out of the unit on November 15, 2021, and a condition inspection on moving out was conducted. The landlord signed the report. The tenant refused to sign the report when the landlord recorded damages to the unit. A copy was submitted as evidence.

The landlord testified to damage to the flooring and baseboards caused by the tenant, damages which are reflected on the report on moving out.

The landlord provided photographs of the damages. The landlord has been unable to schedule the repairs because of delays with provision of labour and materials. The landlord calculated that the cost of the repairs was more than the security deposit. The landlord requested an award in the amount of the security deposit only, \$1,000.00.

The landlord requested a Monetary Order of \$1,000.00 and authorization to apply the security deposit of \$1,000.00 to the award.

The landlord withdrew the claim for reimbursement of the filing fee without leave to reapply.

### Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations, or a tenancy agreement.

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

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award. The landlord provided credible testimony supported by the condition inspection reports on moving in and moving out as well as photographs.

I have considered all the evidence submitted by the landlord, including the photographs, and the condition inspection report on moving in (signed by tenant) and moving out (not signed by tenant).

Considering the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the unit was damaged when the tenant vacated, the tenant is responsible for the damage, the landlord expected the cost of repairs will be more than the security deposit, and the landlord took all reasonable steps to mitigate expenses. I find the landlord is entitled to a monetary award in the amount requested of \$1,000.00 as requested.

Further to section 72, the landlord is authorized to apply the security deposit of \$1,000.00 to the award.

The landlord withdrew the claim for reimbursement of the filing fee which is dismissed without leave to reapply.

Conclusion

The landlord granted an award of \$1,000.00 which is satisfied by application of the security deposit to the award. No Monetary Order shall accordingly issue.

The claim for reimbursement of the filing fee is dismissed without leave to reapply.

This Order must be served on the tenant. If the tenant fails to comply with this Order the landlord may file the order in the Provincial Court (Small Claims) to be 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: June 20, 2022

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Residential Tenancy Branch