



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

File #310065782: MNDCT

File #310069041: MNDL-S, FFL

### Introduction

The Tenant seeks an order for monetary compensation pursuant to s. 67 of the *Residential Tenancy Act* (the “*Act*”).

The Landlord files its own application, seeking the following relief under the *Act*:

- an order pursuant to ss. 38 and 67 for compensation for damage to the rental unit caused by the Tenant by claiming against the security deposit; and
- return of its filing fee pursuant to s. 72.

N.M. appeared as the Tenant. He was joined by G.L. who acted as the Tenant’s advocate. G.T. appeared as the Landlord’s agent. S.S. also appeared on behalf of the Landlord, though indicated that it was strictly as an observer. S.S. was not affirmed, nor did she provide evidence at the hearing.

The parties 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. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord’s agent advised having served its Notice of Dispute Resolution and evidence on the Tenant, which was acknowledged to have been received by his advocate. The advocate raised no objections with respect to service. I find that pursuant to s. 71(2) of the *Act* that the Tenant was sufficiently served with the Landlord’s application materials.

### Preliminary Issue – The Tenant’s Application

At the outset of the hearing, the Tenant’s advocate advised that the Tenant was withdrawing the Tenant’s application. The Landlord’s agent took no issue with the Tenant withdrawing his application.

The Tenant’s application is strictly a claim for monetary compensation. He does not claim for the return of the security deposit. In other words, withdrawing the application does not have any corresponding affect to the Landlord’s rights under the *Act*, such as when a claim is made against the security deposit or when a notice to end tenancy is disputed by a tenant. Given this, I see no prejudice to permitting the Tenant to withdraw his claim on the day of the hearing particularly since the Landlord’s agent raised no objection or issues in him doing so.

Accordingly, the Tenant’s application was withdrawn and was not considered by me. I make no findings of fact or law with respect to the claims made in the Tenant’s application.

The Tenant’s advocate further advised that the Tenant would be solely relying on three photographs as evidence, which I am told are similar to photographs provided by the Landlord. I am also told these photographs have been served on the Landlord but were not provided to the Residential Tenancy Branch. The Landlord’s agent raised no issue with the inclusion of this evidence. Accordingly, I permitted the Tenant to provide the three photographs after the hearing as they were served on the Landlord and that no issues were raised by the Landlord’s agent at the hearing.

### Issues to be Decided

- 1) Is the Landlord permitted to claim against the security deposit?
- 2) Is the Landlord entitled to monetary compensation for damage to the rental unit caused by the Tenant?
- 3) Is the Landlord entitled to the return of its filing fee?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. Rule 7.4 of the Rules of Procedure requires parties at the hearing to present the evidence

they have submitted. I have reviewed the evidence referred to me and considered the oral submissions made at the hearing. Only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit in July 2006.
- The Tenant vacated the rental unit on March 31, 2022.
- Rent of \$1,134.00 was due on the first day of each month.
- A security deposit of \$400.00 was paid by the Tenant

I was provided with a copy of the tenancy agreement.

The Landlord has also provided a copy of the condition inspection report. The Landlord's agent confirmed it was completed on March 30, 2022. The Tenant, through his advocate, acknowledged receipt of the condition inspection report. The parties confirm that the Tenant provided his forwarding address within the condition inspection report on March 30, 2022.

I am told that the Tenant refuse to sign the move-out inspection, with the Landlord's agent advising that the Tenant participated but did not agree with the report, marking "I disagreed" in the form.

The Landlord's agent alleges that the Tenant damaged a kitchen wall after he removed wallpaper. I have been provided with photographs of the affected area by the Landlord. The Landlord's agent testified that it took an employee of the Landlord 10 hours to repair the damage, though it is limiting its claim for the wall damage to \$50.00. I have not been provided with a receipt for this amount nor have I been provided with a time sheet for the employee's time.

The Tenant's advocate argues that the wall damage was reasonable wear and tear, that it was a long tenancy, and that the rental unit was painted in any event. I am directed to the condition inspection report by the Tenant's advocate, which highlights various aspects of the rental unit need painted. The Landlord's agent testified that the Landlord's cost for repainting the rental unit were higher than the \$50.00 claimed, though this was the amount the Landlord attributes to the damage within the kitchen, which was argued to be caused by the Tenant.

The Landlord also alleges that a ceiling fan located within the rental unit was removed by the Tenant and that a spotlight was put in its place by the Tenant. The Landlord's evidence includes a photograph of a room with an empty electrical ceiling receptacle, which the Landlord's agent tells me was taken in February 2022. The Tenant provides a photograph with a light installed in the ceiling receptacle. The Landlord's agent testifies that the ceiling fan was installed by the Landlord and that it seeks the cost of its replacement, which is evidenced in the form of a receipt dated April 8, 2022 for \$110.04.

The Tenant denied that there was ever a ceiling fan. His advocate directed me to the condition inspection report in which the room in question crosses out "ceiling fan". It was argued that other aspects were crossed out on the basis that they were not present in the rental unit at its outset. The Landlord's agent advised that he was not involved in the move-in inspection and could not comment on why the ceiling fan was crossed out.

Finally, the Landlord alleges that the range hood in the kitchen was dirty and that the cost of cleaning it was \$70.00. The Landlord's evidence includes a receipt for the cleaning and a photograph of the dirty range hood. The Tenant provides his own photograph of the range hood. The Tenant argues that the range hood was cleaned throughout the tenancy and at the end of the tenancy. His advocate further argued that the Landlord is responsible for reasonable wear and tear and that the range hood predated the tenancy.

The Landlord's evidence includes a deposit report indicating that \$250.00 was withheld by the Landlord from the security deposit but that the remainder, with interest, had been returned to the Tenant.

### Analysis

The Landlord claims for damages against the security deposit.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38. Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the security deposit within the 15-day window, the landlord may not claim against the security deposit and must pay the tenant double their deposit.

I find that the parties have completed the condition inspection report in accordance with the *Act* such that neither's claim to the security deposit has been extinguished by ss. 24 or 36 of the *Act*. The report is in the proper form, the parties participated in the inspection together, and a copy was provided to the Tenant. Though the Tenant refused to sign the move-out inspection report, I find that that is not material as there is no contention that he did not participate. It is clear in the notes provided that the Tenant did participate but did not agree with the contents of the move-out inspection.

In this instance, it is undisputed that the Tenant provided his forwarding address on March 30, 2022. Though the parties confirmed the tenancy ending on March 31, 2022, the condition inspection report clearly marks that the move-out date was on March 30, 2022 at 1:00 PM, which is the date I find that the tenancy ended. I find that the 15-day window was triggered on March 30, 2022, such that the Landlord had until April 14, 2022 to file its application.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Landlord filed its application on April 11, 2022. Accordingly, I find that the Landlord filed in time and that the doubling provision under s. 38(6) does not apply.

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.

Section 37(2) of the *Act* imposes an obligation on tenants to leave the rental unit in a reasonably clean and undamaged state, except for reasonable wear and tear, and to give the landlord all keys in their possession giving access to the rental unit or the

residential property. Policy Guideline 1 defines reasonable wear and tear as the “natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.”

Looking first at the ceiling fan, I note that s. 21 of the Regulations states that “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 instance, I accept the Tenant's evidence, as supported by the move-in condition report, that there was no ceiling fan at the outset of the tenancy. Accordingly, I am unable to find that he is responsible for its replacement. This portion of the Landlord's claim is dismissed.

Looking next at the damage to the kitchen wall, I accept the Landlord's evidence that wallpaper was torn off the walls by the Tenant, causing damage in the process. I do not agree with the Tenant's argument that this constitute reasonable wear and tear but was, instead, a deliberate act by the Tenant. However, I am unable to find that the Landlord has made out its claim with respect to the \$50.00 claim as I have been provided with no receipts or timesheets quantifying the Landlord's claim. It is a bare estimate. The Landlord bears the burden of making out its claim, which includes quantifying its loss. In this instance, I find that the Landlord has failed to do so. This portion too is dismissed.

Finally, the Landlord seeks \$70.00 to clean the range hood. I have reviewed the photographs provided, which clearly show the range hood with what appears to be built up grease. The Tenant argues this is reasonable wear and tear. I do not agree. Reasonable wear and tear only applies to damage to the rental unit, not cleaning. In this instance, the Landlord is not arguing that the Tenant should pay for the replacement of the fan, rather the cost of cleaning it. I find that the Landlord has demonstrated the Tenant breached s. 37 of the *Act* by failing to clean the range hood. I further accept that the Landlord suffered a loss of \$70.00, as evidenced in the receipt provided, to clean the range hood. I find that mitigation is not applicable under the circumstances. I find that the Landlord has made out its claim for the \$70.00 cleaning fee.

I find that the Landlord has demonstrated a total monetary claim of \$70.00. All other aspects are dismissed.

I find that the Landlord was mostly unsuccessful in its application. Accordingly, I dismiss its claim for the return of its \$100.00 filing fee without leave to reapply.

Policy Guideline #17 states the following with respect to the retention or the return of the security deposit through dispute resolution:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on:
  - a landlord's application to retain all or part of the security deposit; or
  - a tenant's application for the return of the deposit.

Unless the tenant's right to the return of the deposit has been extinguished under the *Act*. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

As the Landlord retained \$250.00 from the security deposit but returned the rest plus interest, I order that the balance of \$180.00 (\$250.00 - \$70.00) be returned to the Tenant.

### Conclusion

The Landlord is entitled to retain \$70.00 from the security deposit. The balance, being \$180.00, is to be returned to the Tenant.

The Landlord's claim under s. 72(1) of the *Act* for the return of its filing fee is dismissed without leave to reapply.

Pursuant to ss. 38 and 67 of the *Act*, I order the Landlord pay \$180.00 to the Tenant.

It is the Tenant's obligation to serve the monetary order on the Landlord. If the Landlord does not comply with the monetary order, it may be filed by the Tenant with the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: December 05, 2022

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Residential Tenancy Branch