



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL, FFL

### Introduction

This hearing dealt with the landlord's application for monetary compensation for damage to the rental unit.

Both the landlord and the tenant appeared for the hearing and the parties were affirmed. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I confirmed the tenant received the landlord's proceeding package and evidence. I confirmed the landlord received the tenant's response and evidence. Although both parties served in a manner that does not comply with the Act, since both parties acknowledged receipt of the other party's materials, I deemed the parties sufficiently served pursuant to the authority afforded me under section 71 of the Act and I admitted the materials of both parties for consideration in making my decision.

I noted that the landlord claimed an amount equivalent to the security deposit but did not indicate the dispute code associated with seeking authorization to retain the security deposit. I confirmed with both parties that the landlord is still holding the security deposit. In speaking with the landlord, it was apparent the landlord was unfamiliar with administration of security deposits and making claims against a security deposit. The landlord stated she is a first-time landlord. I amended the application to reflect the landlord is seeking authorization to retain the tenant's security deposit, which is beneficial to both parties since it provides for disposition of the security deposit.

Issue(s) to be Decided

1. Has the landlord established an entitlement to receive compensation from the tenant equivalent to the amount of the security deposit or \$700.00?
2. Is the landlord authorized to retain the security deposit or should it be returned to the tenant?
3. Should the security deposit be doubled?

Background and Evidence

Under an oral tenancy agreement, the tenancy started in 2021 and ended on January 31, 2022. The tenant was required to pay rent of \$1400.00 per month and the landlord collected a security deposit of \$700.00.

The landlord did not prepare a move-in or move-out inspection report.

The tenant did not authorize the landlord to retain the security deposit, in writing.

The tenant provided a forwarding address to the landlord, in writing, on May 10, 2022. The landlord filed this application on May 18, 2022.

The landlord seeks compensation of \$700.00 for three things, as identified on the landlord's Application for Dispute Resolution: damage to the stove-top, a broken shower door, and a dirty wall.

The tenant denies liability for the damage claimed by the landlord and seeks return of double the security deposit.

Below, I have summarized the parties respective positions and evidence.

**Stove top**

The landlord submitted that the stove top elements were over-used and turned to ash when they were touched at the end of the tenancy.

The tenant testified that the stove-top had pre-existing damage from burnt on materials at the start of the tenancy. Two of the stove elements did not work during the tenancy and she notified the landlord of this.

I noted there was not a specific amount claimed for the stove-top damage and I was not presented any receipt or invoice to show the stove-top was repaired or replaced. The landlord stated she replaced the stove with one she found online and she did not have a receipt. Nor, did the landlord print out the listing for the stove she purchased on line.

### **Shower door**

The parties were in agreement that the tenant asked to take the glass shower doors off during the tenancy and they were placed in the landlord's storage area.

The landlord submitted that she asked the tenant to reinstall the shower doors at the end of the tenancy but the tenant did not. The landlord had her brother come to reinstall the shower doors and they found that parts of the door were broken or missing.

The shower doors were carefully removed and they did not break any parts. The tenant stated the shower doors were very shaky at the start of the tenancy and she asked to remove them rather than ask the landlord to repair the shower doors. At the end of the tenancy the landlord instructed the tenants to leave the keys under the mat and the tenant tried contacting the landlord to gain access to the shower doors in the landlord's storage area but the landlord did not respond.

I noted the landlord did not provide any receipt or invoice for repair or replacement of the shower doors. The landlord stated she found a replacement door online but she did not have a receipt or copy of the listing.

### **Dirty wall**

The landlord submitted that behind the fridge a dirty wall was found after the tenant moved out. The landlord's husband paid somebody to clean and repaint the wall.

The tenant responded that it was actually mould on the wall and not dirt. The tenant submits she is not responsible for causing mould on the wall and suspects it is the result of insufficient heat in the rental unit. The tenant described how she had to use portable heaters in the unit because the unit was not equipped with sufficient heating.

The landlord believes the cost to clean and paint the wall was \$150.00 but the landlord did not have a receipt because it was paid in cash.

### **Analysis**

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this case, the landlord is the claimant and has the burden to prove entitlement to the compensation she seeks.

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

Under sections 23 and 35 of the Act, a landlord is required to prepare written reports, with the tenant, at the start and end of the tenancy. The purpose of these reports is to document the condition of the rental unit when it is given to the tenant and when it is returned to the landlord. The reports are to be prepared in accordance with the Residential Tenancy Regulations and when completed properly, form the best evidence as to the condition of a rental unit. Obviously, one of benefits of completing these reports together is to avoid disputes as to the condition of the unit.

I was provided disputed oral testimony as to whether the stove top damage was pre-existing and whether the shower door and wall dirt/mould was the result of the tenant's actions or negligence. The landlord did not have a move-in and move-out inspection report to support her claims that the tenant is responsible. The landlord had photographs taken at the end of the tenancy but did not have any photographs taken at

the start of the tenancy. Further, the landlord did not provide any receipts, invoices, estimates, price lists or the like to substantiate the amount of her losses, if any. For these reasons, I find the landlord did not meet her burden of proof against the tenant and I dismiss the landlord's claims, in their entirety, without leave to reapply.

Considering the landlord was unsuccessful in establishing an entitlement to compensation from the tenant and the landlord is still holding the security deposit, in keeping with Residential Tenancy Policy Guideline 17, I order the landlord to return the security deposit, in the full amount of \$700.00, to the tenant without any further delay.

The tenant requested the security deposit be doubled; however, I find the doubling provision does not apply in this case, as explained below.

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

The landlord received the tenant's forwarding address, in writing, on May 10, 2022 and filed her claim within 15 days, on May 18, 2022. Therefore, I find the landlord did one of the things the landlord was entitled to do within the time limit for doing so and the security deposit is not doubled.

Provided to the tenant with this decision is a Monetary Order in the amount of \$700.00 to ensure the landlord refunds the deposit to the tenant in the full amount.

### Conclusion

The landlord's claims are dismissed, in their entirety, without leave to reapply.

The landlord is ordered to return the full amount of the security deposit to the tenant, without delay. The tenant is provided a Monetary Order in the amount of \$700.00 to ensure payment is made.

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: January 31, 2023