



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDL-S, MNDCL-S, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security and pet deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

Both parties appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue to be Decided

Is the landlord entitled to a monetary award for damage or loss arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security and pet deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

### Background, Evidence

The landlord's testimony is as follows. The tenancy began on May 1, 2021 and ended on July 1, 2022. The tenant was obligated to pay \$2700.00 per month in rent in

advance and at the outset of the tenancy the tenant paid a \$1350.00 security deposit and \$1350.00 pet deposit which the landlord still holds. The landlord testified that the tenant left the unit dirty and damaged at move out. The landlord testified that tenant damaged floors, walls, blinds and changed a lock without authorization or providing keys to the landlord. The landlord testified that the tenant did not pay the utilities, gas and hydro costs as noted in their tenancy agreement. The landlord testified that the tenant didn't clean the suite or carpets sufficiently.

The landlord testified that written condition inspection reports were conducted at move in and move out with the tenant present. The landlord testified that the tenant and his business partner participated in the move out inspection as he was recovering from covid and that his partner did not do a very good job and missed many items. The landlord testified that the tenant agreed to "waive" her deposits. The landlord is seeking compensation for all the costs incurred as he feels the tenant is responsible for them.

The landlord is applying for the following:

1.	Flooring	\$3375.88
2.	Painting	934.73
3.	Carpet Cleaning	269.85
4.	Cleaning of the entire suite	502.50
5.	Utilities	106.22
6.	Hydro	81.96
7.	Gas	72.30
8.	Blinds	78.37
9.	Keys	42.17
10.	Lights	15.41
11.	Filing fee	100.00
	<b>Total</b>	<b>\$5,579.39</b>

The tenant gave the following testimony. The tenant testified that she signed off relinquishing her deposits at the move out inspection with DS but was told verbally by DS that after the cleaning and some minor repairs were done, much of her deposit would be returned to her. The tenant disputes the claim made by the landlord as she felt the unit has numerous deficiencies and that she was not responsible for the alleged damages. The tenant denies changing locks or causing the damage as alleged by the landlord.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord's business partner participated in the move out inspection with the tenant on July 1, 2022. The tenant stated that she didn't agree to giving up her deposits but the condition inspection report clearly shows that she did. The condition inspection report reflects that the parties agreed that the tenant would relinquish her pet and security deposit in full and the parties signed and agreed to those terms. TD contacted the tenant on July 7, 2022 advising the tenant that his business partner didn't conduct a very thorough inspection and overlooked many items. TD testified that DS isn't proficient and missed a lot.

There wasn't any notation on the condition inspection report at move out stating the parties agreed to postpone and reconvene the inspection at a later date. DS and AM conducted the condition inspection report. Both parties had the opportunity to inspect the unit and make any notations or comments on the inspection form. Despite the tenant's objection today, DS and AM agreed that the landlord would be able to retain the pet and security deposit in full. The landlord cannot then decide a week later that they aren't happy with the inspection and seek costs above what was agreed to; nor can the tenant renege on their agreement to give up the deposits. Based on the above, I find that the parties agreed that the landlord would retain the \$2700.00 in deposits and no further compensation is appropriate.

### Conclusion

The landlord is entitled to retain the \$1350.00 security deposit and \$1350.00 pet deposit that they presently hold as agreed to by the parties at the move out condition inspection. No further compensation is granted, the remainder of the landlords application is dismissed 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: April 04, 2023

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Residential Tenancy Branch