



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      **MNDL-S, FFL**

### Introduction

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

1. A Monetary Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit pursuant to Section 38 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord testified that she was not recording this dispute resolution hearing.

The Landlord testified that she served the Tenant with the Notice of Dispute Resolution Proceeding package and evidence on August 6, 2022 by Canada Post registered mail (the "NoDRP package"). The Landlord referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that

the Tenant was deemed served with the NoDRP package five days after mailing them on August 11, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

### Issues to be Decided

1. Is the Landlord entitled to a Monetary Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit?
2. Is the Landlord entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord testified that this tenancy began as a fixed term tenancy on June 1, 2018. The fixed term ended on June 1, 2019, then the tenancy continued on a month-to-month basis. Monthly rent was \$1,800.00 payable on the first day of each month. A security deposit of \$900.00 and a pet damage deposit of \$500.00 were collected at the start of the tenancy and are still held by the Landlord.

The Landlord seeks to keep the \$1,400.00 total deposits to cover expenses she paid at the end of the tenancy. The tenancy ended on June 30, 2022.

The Landlord had to replace the living room and two bedrooms flooring. She is uncertain if the damage is caused by the dog or from the Tenant dragging furniture around. There were gouges in the flooring and the carpet was so badly stained. She asked a repair person to fix it, and she was told it would cost more to fix it than to replace it. The amount to replace was greater than what the Landlord holds in the deposits.

The Landlord said the stove could not be cleaned, she had to replace it. She had to replace the curtains in the living room. She had the washing machine serviced as dog hair completely blocked the filter, and it was filled with mould and discoloured.

The Tenant got a pet in 2019, and the Landlord had it put in writing that the yard was to remain how it was prior to the dog coming into the home. At the end of the tenancy, the

Landlord had to put new grass seed down, bring in more soil and clean up buckets of dog feces.

The Tenant did not participate in a move-in condition inspection because she came from overseas, so the Landlord did the inspection and took pictures. The Tenant did not want to participate in a move-out condition inspection, although asked three times.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

***Consequences of not attending the hearing:*** *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

Under Sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the Act and *Residential Tenancy Regulation* (the "Regulations"). The Landlord did the move-in condition inspection in the absence of the Tenant as the Tenant was coming in from overseas. The Landlord provided the Tenant with three opportunities to participate in the move-out condition inspection, but the Tenant said she did not want to do it. I find the Landlord did not extinguish her right to claim against the deposits in this tenancy.

### ***Leaving the rental unit at the end of a tenancy***

**37** ...

- (2) *When a tenant vacates a rental unit, the tenant must*
  - (a) *leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and*

...

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline states, "*The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.*" This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze whether:

- a party to the tenancy agreement has failed to comply with the Act, Regulation, or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage 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.

The Tenant did not participate in the move-out condition inspection, and the Landlord submitted the Tenant left the rental unit damaged and unreasonably dirty at the end of the tenancy. I find the Tenant breached Section 37(2)(a) of the Act and the Landlord suffered loss and damage from the Tenant's non-compliance.

The Landlord is only seeking authorization to retain the deposits, even though the total cost for repairs was more than the deposits total. Based on the Landlord's undisputed testimony, I find on a balance of probabilities that the Landlord is entitled to retain the security deposit and pet damage deposit as compensation for her loss pursuant to Section 67 of the Act.

In addition, having been successful, I find the Landlord is entitled to recover the application filing fee paid to start this application. I grant the Landlord a Monetary Order for \$100.00.

### Conclusion

The Landlord is issued a Monetary Order for \$100.00. This Order must be served on the Tenant as soon as possible. If the Tenant fails to comply with the Order, the Order may

be filed in 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 Act.

Dated: May 09, 2023

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Residential Tenancy Branch