



# 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 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 attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and arguments.

### Issue to be Decided

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

Is the landlord entitled to retain all or a portion of the tenant's security 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 November 30, 2022. The tenants were obligated to pay \$2000.00 per month in rent and at the outset of the tenancy the tenants paid a \$1000.00 security deposit which the landlord still holds. The landlord testified that the tenants left the unit dirty and damaged at move out. The landlord testified that the tenants damaged a bedroom wall and the

stove. The landlord testified that the tenants didn't clean the unit sufficiently at move out. The landlord testified that the tenants owed her \$2773.16 in unpaid utilities. Condition inspection reports were not conducted at move in or move out.

The landlord is applying for the following:

1.	Unpaid Utilities	\$2773.16
2.	Repair wall damage	489.30
3.	Repair stove door and install	536.61
4.	Suite Cleaning	200.00
5.	Filing fee	100.00
6.		
7.		
8.		
9.		
10.		
	TOTAL	<b>\$4,099.27</b>

TK testified that the parties agreed to a lower amount for the utilities just a few days prior to this hearing. TK testified that a partial payment of \$954.00 was made to the landlord and that the security deposit can be given to the landlord to cover the outstanding balance of \$1000.00. TK testified that no condition inspection reports or walk throughs were conducted and that the landlord wasn't present. TK testified that he was told by the landlords agent that everything with the unit was fine but then was told weeks later that there were issues. Both tenants dispute that they caused the damage, and both dispute the landlords allegation that the unit was dirty at move out.

### 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.

I address the landlords claim and my findings as follows.

### Utilities

During the hearing, the parties advised that the landlord reduced the amount she was seeking for the utilities several days prior to today's date to \$1953.16. Both parties advised that the amount owing is \$1000.00 and that the parties agreed that the landlord is entitled to keep the deposit to cover that cost. This matter was resolved prior to this hearing and I need not make any determination on it. The parties agree that the landlord is to retain the \$1000.00 security deposit.

### Wall damage, stove repair and labour cost

The landlord advised that the prices are estimates only and that none of the work has been conducted and therefore the landlord has not proven any loss. In addition, it was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation, I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support this portion of her claim and I therefore dismiss this portion of their application.

### Cleaning

The landlord submitted photos but did not have a time or date stamp on them. It is unclear as to when the photos were taken. It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation, I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support this portion of her claim and I therefore dismiss this portion of their application.

The landlord has not been successful in her application and is not entitled to the recovery of the filing fee.

### Conclusion

The landlords application is dismissed in its entirety without leave to reapply. The parties confirmed that the landlord is entitled to retain the security deposit.

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 13, 2023

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Residential Tenancy Branch