



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

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## **DECISION**

Dispute Codes      MNDL-S MNSDS-DR, FFT

### Introduction

The landlord seeks compensation under section 67 of the *Residential Tenancy Act* (the “Act”).

The tenants seek the return of their security deposit and additional compensation under sections 38, 67, and 72 of the Act.

### Issues

1. Is the landlord entitled to compensation?
2. Are the tenants entitled to compensation?

### Background and Evidence

In a dispute resolution proceeding, the applicant must prove their claim on a balance of probabilities ( “more likely than not”). I have considered the parties’ testimony, arguments, submissions, and documentary evidence, but will only refer to evidence that I find relevant and necessary to explain the decision.

The tenancy began on September 15, 2020, and ended on September 13, 2022. Monthly rent was \$2,850.00 and the tenants paid a security deposit of \$1,425.00. There was a written tenancy agreement in evidence. The landlord retains the security deposit pending the outcome of these applications.

The tenant testified that they seek the return of the security deposit, which the landlord has not returned. They also seek compensation in the amount of \$900.00 for twelve months of what they calculate to be \$75.00 for which they were paying for only partial use of a storage locker. Storage lockers cost \$175.00 per month but included in the rent.

However, the tenant testified that the landlord was using at least half of the locker (maybe less) during the first year of the tenancy and more than half during the second year. The landlord's agent submitted that the tenants knew that the landlord would be using the locker and they agreed to this when they signed the second tenancy agreement.

The landlord's agent testified that the landlord retained the security deposit because of the costs of damages to the property, including cleaning costs. The landlord's application indicates that the landlord seeks \$4,000.00. The agent testified that someone told the landlord that the repairs could cost anywhere between \$6,000 to \$7,000.

I pause to note that the landlord did not submit a completed Monetary Order Worksheet (required in all claims for compensation under the Act), nor did the landlord submit copies of any receipts, invoices, or even estimates, leading to a formulation of the \$4,000 claim.

### Analysis

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A party claiming compensation must do whatever is reasonable to minimize their loss.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

To determine if a party is entitled to compensation, the following four-part test must be met: (1) Did the respondent breach the Act, the tenancy agreement, or the regulations? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant take reasonable steps to minimize their loss?

In respect of the landlord's application for compensation, the landlord has not proven the amount of the loss being claimed. A third party's estimate of \$6,000 to \$7,000, without anything to support this estimate, is wholly inadequate in supporting the landlord's claim for \$4,000. Without *some* sort of supporting evidence, such as estimates, or quotes, or receipts, or anything of that nature, I am unable to find that the \$4,000 being claimed is proven. For this reason, I need not consider the other components of the four-part test and accordingly dismiss the landlord's application.

Having found that the landlord has not proven their application the tenants are entitled to the return of their security deposit in the amount of \$1,425.00.

In respect of the tenants' claim for \$900.00 for the landlord's sharing of the storage locker, the second tenancy agreement (covering the one-year period pertaining to this claim) was signed by both tenants and the landlord. The storage included in the rent is *clearly* indicated as "50/50" on page two of the tenancy agreement.

If the tenants disagreed with this modification of the second tenancy agreement from the first, they were at liberty to protest this. But they did not. They agreed to the contractual modification that the storage locker would be used on a 50% basis. Given these facts, I am not persuaded that the landlord breached the Act, and no compensation may flow. The tenants are therefore not entitled to the additional compensation being sought and this portion of their claim is dismissed.

Because the tenants were successful in their claim for the return of the security deposit, they are entitled to recover the cost of the application fee in the amount of \$100.00, pursuant to section 72 of the Act. This amount is added to the \$1,425.00 for a total award of \$1,525.00. The landlord is ordered to pay this amount to the tenants within 15 days of receiving a copy of this decision.

The tenants are issued with a monetary order with this decision, and they are responsible for serving a copy of the monetary order upon the landlord.

### Conclusion

**The landlord's application is dismissed, without leave to reapply.**

**The tenants' application is granted, in part, and they are awarded \$1,525.00.**

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: July 28, 2023

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Residential Tenancy Branch