



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDL, MNDCL, FFL  
                              MNSDS-DR, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution that was filed by the Landlord (the Landlord's Application) on September 14, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Compensation for damage caused by the Tenants, their pets, or their guests to the unit, site, or property;
- Compensation for monetary loss or other money owed;
- Retention of the security deposit; and
- Recovery of the filing fee.

This hearing also dealt with an Application for Dispute Resolution that was filed by the Tenants (the Tenants' Application) on September 21, 2022, under the Act, seeking:

- The return of their security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 pm on June 13, 2023, and was attended by the Tenants EA and CG, as well as the Landlord. All testimony provided was affirmed. As the parties acknowledged service of the Notices of Dispute Resolution Proceeding (NODRPs), and raised no concerns regarding the service dates or methods, the hearing proceeded as scheduled. As the parties also acknowledged receipt of each other's documentary evidence, and raised no concerns with regards to service dates or methods, I accepted the documentary evidence before me for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked not to speak over me and one another, and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that personal recordings of the proceedings are prohibited, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

### Preliminary Matters

Although the Landlord indicated in their paper Application that they were seeking authority to retain the security deposit, this issue was inadvertently omitted from the Notice of Dispute Resolution Proceeding (NODRP) due to a processing error by the Residential Tenancy Branch (Branch). Despite this processing error, the Landlord still filed for retention of the security deposit as part of their Application filed on September 14, 2022. As a result, it is included in the Landlord's claims as set out above, even though it does not appear on the Notice of Dispute Resolution Proceeding.

### Issue(s) to be Decided

Is the Landlord entitled to compensation for damage caused by the Tenants, their pets, or their guests to the unit, site, or property?

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Landlord entitled to retention of the security deposit, or any portion thereof?

If not, are the Tenants entitled to its return, or double its amount?

Are the parties entitled to recovery of their respective filing fees?

### Background and Evidence

The parties agreed to the following:

- the tenancy ended on August 31, 2022;
- move-in and move-out condition inspections were scheduled and conducted as required;
- move-in and move-out condition inspection reports were completed;
- the Landlord received the Tenants' forwarding address in writing; and
- no portion of the \$1,312.50 security deposit has been returned.

However, the parties disagreed about whether the Tenants were provided with a copy of the move-out condition inspection report as required. The Tenants stated that they were never provided with a copy and that the Landlord had pre-filled out sections prior to the inspection. The Landlord stated that the Tenants took pictures of the move-out condition inspection report during the inspection on August 31, 2022, which should suffice.

The Landlord stated that the Tenants failed to leave the rental unit reasonably clean and undamaged at the end of the tenancy, except for reasonable wear and tear, as required. As a result, the Landlord sought recovery of the following amounts:

- \$100.00 in cleaning costs;
- \$46.68 for replacement of a damaged toilet seat;
- \$39.25 for curtain(s);
- \$393.75 for carpet cleaning; and
- \$270.90 for replacement of broken crisper drawers.

Although the Tenants agreed that they owe \$393.75 for carpet cleaning, they denied responsibility for any of the other claims. The Tenants stated that when they moved in, the toilet seat was usable but damaged, and that the Landlord is improperly seeking recovery of this amount from them as they have an e-mail from the previous tenants indicating that those tenants were already charged for the cost of replacing the toilet seat. However, the Tenants argued that the Landlord did not do this, as the toilet seat was already damaged and not new at the start of their tenancy. The Landlord disagreed stating that the Tenants damaged the toilet seat, which was only one year old.

The Landlord stated that one of the curtain panels was missing at the end of the tenancy, and that when the Tenants failed to return it or replace it, the entire set was replaced at a cost of \$39.25. The Tenants agreed they were required to return or replace the missing curtain panel, which they stated they did. At the hearing the

Landlord acknowledged receipt of this curtain panel but stated that it did not match the size or colour of the missing panel and as a result, the entire set was replaced.

The Landlord stated that the Tenants broke the crisper drawers of the fridge, which were replaced one year prior to the start of the tenancy, and had to be replaced again at a cost of \$270.90. The Tenants denied damaging the crispers, stating that although they were cracked at the start of the tenancy, they worked fine, and they had no issues with them. The Tenants stated that they have not received evidence from the Landlord that they were broken, and that they are concerned that the Landlord is again blaming them for damage the previous tenants were already charged for, and that the Landlord subsequently failed to repair prior to the start of their tenancy.

In addition to recovery of double the amount of their security deposit, as the Tenants stated that the Landlord has neither claimed against it nor returned it as required, the Tenants also sought the return of a \$60.00 key deposit. The Landlord acknowledged charging the Tenants the \$60.00 key deposit and agreed that the keys were returned. However, the Landlord argued that they could not return the key deposit to the Tenants because the Tenants were not comfortable dealing with them. The Tenants denied this was the case, stating that the Landlord has simply withheld this deposit like they withheld the security deposit.

### Analysis

Based on the documentary evidence before me from the Tenants, specifically the #RTB-47 and a proof of service form, I am satisfied that the Tenants' forwarding address was sent to the Landlord by registered mail on September 15, 2022. I therefore deemed the Landlord served five days later, on September 20, 2022, pursuant to section 90(a) of the Act. As the Landlord acknowledged failing to provide the Tenants with a copy of the move-out condition inspection report as required by section 35(4) of the Act and section 18(1)(b) of the regulation, I am satisfied that they extinguished their right to claim against the security deposit pursuant to section 36(2)(c) of the Act, but only in relation to damage. As the Landlord also sought compensation for monetary loss related to cleaning and missing curtains, I find that they were still entitled to retain the security deposit provided they complied with section 38(1) of the Act.

As I am satisfied that the tenancy ended on August 31, 2022, and as the Application was filed by the Landlord on September 14, 2022, I find that the Landlord complied with section 38(1) of the Act. They were therefore entitled to retain the security deposit

pending the outcome of the Applications. As no arguments were raised that the Tenants extinguished their right to the return of any portion of their deposit, I find that they did not.

I am satisfied by a copy of an email provided by the Tenants, that previous occupants of the unit were charged for two broken bottom crisper drawers and replacement of the ensuite toilet seat, among other things. Although the Landlord argued that these items were replaced between tenancies, the Tenants disagreed. The parties also disagreed about the accuracy of the condition inspection reports, whether they were altered after completion, and if so, by whom. Further to this, no documentary evidence was submitted by the Landlord which satisfies me that these items were in fact replaced after the last tenancy and before this tenancy.

Based on the above, I find that the Landlord has failed to satisfy me on a balance of probabilities that the fridge crisper drawers and the toilet seat were not damaged at the start of the tenancy. As a result, I dismiss their claim for recovery of costs incurred to replace them without leave to reapply.

At the hearing the Tenants acknowledged failing to return the correct curtain panel and agreed that they owed the \$393.75 for carpet cleaning. In an email submitted by the Landlord dated August 31, 2022, the Tenants agreed to pay for oven cleaning. The Landlord submitted a receipt for the purchase of new curtains and the carpet cleaning, as well as a copy of a cheque written for oven cleaning. Based on the above, I am satisfied the Tenants breached section 37(2)(a) of the Act, resulting in a loss of not less than \$533.00 by the Landlord. I am also satisfied that the Landlord mitigated their loss by having the cleaning completed and the curtains replaced at a reasonably economic rate. As a result, I grant the Landlord's claim for recovery of these amounts.

Pursuant to section 72(2)(b) of the Act, the Landlord is permitted to retain \$533.00 from the \$1,326.10 security deposit held in trust (the \$1,312.50 security deposit originally paid, plus \$13.60 in interest owed). The Tenants are therefore entitled to the remaining balance owed of \$793.10, plus the return of their \$60.00 key deposit as the Landlord acknowledged receiving the keys and failing to return this amount. Pursuant to section 67 of the Act, I grant the Tenants a monetary order in the amount of \$853.10, and I order the Landlord to pay this amount to the Tenants.

As both parties were successful in portions of their claims against one another, I decline to grant either party recovery of their filing fee.

Conclusion

The Landlord is entitled to retain **\$533.00** from the \$1,326.10 security deposit and interest currently held by them in trust.

Pursuant to section 67 of the Act, I grant the Tenants a Monetary Order in the amount of **\$853.10** for the balance of their security deposit and interest, plus the return of their key deposit. The Tenants are provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, it 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 Branch under Section 9.1(1) of the Act.

Dated: July 13, 2023

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Residential Tenancy Branch