



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDCT, OLC, FFT, MNDL-S, FFL

### Introduction

This hearing dealt cross applications pursuant to the *Residential Tenancy Act* (“*Act*”)

The landlord applied for:

- authorization to retain the tenant’s security deposit in satisfaction of the monetary order requested, pursuant to section 38;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

The tenants applied for:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### Issue(s) to be Decided

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 recover the filing fee for this application from the tenant?

Are the tenants entitled to a monetary order as compensation for loss or damage under the Act, regulation or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The parties agree that the tenancy began on September 1, 2022 and ended on August 31, 2023. Rent in the amount of \$2450.00 was due on the first of each month. The tenants paid a security deposit of \$1225.00 which the landlord still holds.

MD testified that the landlord advised the tenants by text message that they decided to sell the property and that they had to move out at the end of their lease. MD testified that they complied and moved out but were not given one months rent free as is standard when a landlord ends a tenancy to sell a property. MD testified that the landlord has not returned their deposit. MD testified that the landlords claim for damage should be dismissed as it is normal wear and tear and that much of the damage was pre-existing.

NM testified that the tenants moved by their own choice. NM testified that she never issued a notice to the tenants so they shouldn't get compensation. NM testified that the tenants left lots of damage and smell in the unit. NM testified that she and her husband cleaned the suite for a week because it was so dirty. NM testified that she should be able to keep the deposit for all the damage.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

I address the tenants claim for one month's rent compensation as follows. Section 52 of the Act addresses an end of tenancy as follows.

### Form and content of notice to end tenancy

**52 In order to be effective**, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
  - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.**

Both parties confirmed that there was only a text exchange about ending the tenancy, not an approved notice in writing. As there was no proper notice to end tenancy given, the tenants are not entitled to any compensation, accordingly; I dismiss this portion of their application.

The tenants have not provided sufficient evidence to support their request that an order be made to have the landlord comply with the Act, regulation or tenancy agreement, accordingly; I dismiss that portion of their application.

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.

Both parties confirmed that written condition inspection reports were not conducted at move in or move out. Without the condition inspection report or any other **sufficient** 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 his claim and I therefore dismiss their request to retain the deposit for this claim and dismiss this portion of their application.

As the landlord has not been successful in their application, they are not entitled to the recovery of the filing fee and therefore dismiss that portion of their application.

I order that the landlord return the \$1225.00 security deposit back to the tenants. The tenants are also entitled to the recovery of the \$100.00 filing fee for this application for a total monetary award of \$1325.00.

### Conclusion

I grant the tenants an order under section 67 for the balance due of \$1325.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The landlord's application is dismissed in its entirety 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: November 06, 2023

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Residential Tenancy Branch