



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

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## **DECISION**

Dispute Codes      MNDL-S FFL MNSDS-DR

### Introduction

The landlord seeks compensation under the Residential Tenancy Act (the “Act”).

The tenant seeks the return of their security deposit, also under the Act.

### Preliminary Issue: Scope of Tenant’s Application

The tenant made an application for dispute resolution under the Act for a specific claim of relief, namely, for an order returning a security deposit. The amount of the tenant’s security deposit is \$550.00, and this is the amount stated in the tenant’s application.

However, the tenant included in the application a Monetary Order Worksheet itemizing several items for a total claim of \$10,822.58. Merely submitting a Monetary Order Worksheet does not amend or otherwise add a new claim under an existing application for the return of a security deposit. Pursuant to Rule 6.2 of the *Rules of Procedure*, a hearing is limited to matters claimed on the application. Therefore, the only issue that is before me, in respect of the tenant’s application, is whether he is entitled to the return of some, all, or none of the security deposit.

The tenant is at liberty to file a separate application for dispute resolution in which he may claim compensation for those items listed in the Monetary Order Worksheet.

## Issues

1. Is the landlord entitled to compensation?
2. Is the tenant entitled to the return of their security deposit?

## Background and Evidence

In an application under the Act, an applicant must prove their claim on a balance of probabilities. Stated another way, the evidence must show that the events in support of the claim were more likely than not to have occurred. I have reviewed and considered all the evidence but will only refer to that which is relevant to this decision.

A representative for the corporate landlord attended the hearing and provided affirmed testimony. For brevity, the representative will be referred to as the “landlord.” The tenant and the tenant’s legal advocate attended the hearing.

The tenancy began on August 31, 2018, and ended on April 26, 2023. Monthly rent was \$1,100 and the tenant paid a \$550 security deposit. The landlord currently holds the security deposit in trust pending the outcome of these applications. There is a copy of a written tenancy agreement in evidence.

The landlord seeks \$5,859.02 in compensation, comprising of the following: (1) \$440.77 for “paint” (referenced as document numbers 1 through 4 on the landlord’s Monetary Order Worksheet); (2) \$2,943.25 for “locks & paint”; (3) \$875.00 for “cleaning”; (4) \$1,500.00 for “garbage removal”; and (5) \$100.00 for the Residential Tenancy Branch application fee.

The landlord provided affirmed testimony describing the various damages, uncleaned nature of the rental unit, garbage left behind, the need to do painting, piles of rocks left in the yard, and abandoned property.

The landlord also testified that they changed the locks on the property before new tenants moved in. The tenant provided his forwarding address to the landlord on May 9, 2023.

Documentary evidence submitted in support of the landlord's claim included a condition inspection report, invoices, and numerous photographs.

The tenant's position is that he is not liable for a change in locks when he had, in fact, returned the keys. As for the painting costs, the tenant's advocate referred to the four-year useful life policy and that any costs associated with painting should not, after depreciation, be borne by the tenant. Furthermore, the tenant's advocate argued that the tenant was basically unable to return (after being served with a two-day order of possession, issued by the Residential Tenancy Branch) because if he did, the landlord threatened to call the RCMP and have him removed.

Both the tenant and his advocate provided additional testimony, which shall be addressed below, where relevant.

### 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 do whatever was reasonable to minimize their loss?

Based on the evidence before me, I have no difficulty in finding that the tenant breached section 37(2)(a) of the Act, which requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Did the landlord suffer a loss because of this breach? I also have no difficulty in finding that it did. And I further have no hesitation in finding that the amount of the loss has been proven. (However, any claim for painting costs must be reduced to zero dollars given the application of *Residential Tenancy Policy Guideline 40* and the policy reference to a useful life of paint to four years.)

However, did the landlord do whatever was reasonable to minimize their loss? To this part of the four-part test, I must find that the landlord did not. As a general rule, an applicant will not be able to recover losses that could have reasonably been avoided. For the applicant to be denied compensation I must find, on a balance of probabilities, that (1) the applicant failed to make reasonable efforts to mitigate their losses, and (2) that mitigation was possible.

It is not lost on me that the landlord was granted an order of possession which carried with it a two-day effective period. However, it was well within the landlord's decision-making ability to pause enforcement or service of that order of possession in order to give the tenant a reasonable time to clear out wood (if he indeed cut that wood), clean the rental unit, and remove various appliances from the yard. The landlord had the discretion to give the tenant a reasonably opportunity to fulfil his obligations under section 37(2)(a) of the Act but chose not to. I have no hesitation in finding that, had the tenant been given an opportunity to do what he needed to do (at least in respect of what he was ultimately responsible for, such as removing garbage and appliance), then the landlord would have taken reasonable steps in mitigating any future loss.

For this reason, it is my finding that the landlord did not do whatever was reasonable to minimize their losses, and as such must deny the landlord's claim for compensation.

Last, in respect of the landlord's claim for compensation to change the locks, the evidence before me leads me to find that the tenant did return the keys as is required under section 37(2)(b) of the Act. Therefore, a change of locks was ultimately unnecessary and thus the claim for a lock change cannot be awarded.

In summary, taking into consideration all the relevant oral and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not proven its claim on a balance of probabilities, for the reasons as set out above. The landlord's application is therefore dismissed.

The tenant is entitled to the return of his security deposit in the amount of \$550.00. The landlord must pay this amount to the tenant forthwith and the tenant is issued a monetary order for this amount, which must be served upon the landlord.

### Conclusion

For the reasons set out above the landlord's application is dismissed, without leave to reapply.

The tenant's application is granted.

Dated: December 13, 2023

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Residential Tenancy Branch