



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      For the Landlord: MNDL-S, FFL  
                             For the Tenant: MNSD, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The Landlord's application pursuant to the Act is for:

- a monetary order for loss under the Act, Residential Tenancy Regulation (the Regulation) or tenancy agreement, pursuant to section 67;
- an authorization to retain the security deposit (the deposit); and
- an authorization to recover the filing fee, under section 72.

The Tenant's application pursuant to the Act is for:

- an order for the landlord to return the deposit, pursuant to section 38; and
- an authorization to recover the filing fee, under section 72.

Landlord BM (the Landlord) and tenant KG (the Tenant) attended the hearing. Both parties had a full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The parties each confirmed receipt of the notices of dispute resolution proceeding and the evidence (the materials).

Based on the testimonies I find that each party served the materials in accordance with section 89 of the Act.

### Issues to be Decided

Is the Landlord entitled to:

1. a monetary order for loss?

2. an authorization to retain the deposit?
3. an authorization to recover the filing fee?

Is the Tenant entitled to:

1. an order for the return of the deposit?
2. an authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's and tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the applicants' obligation to present the evidence to substantiate their application.

Both parties agreed the tenancy started on August 1, 2022 and ended on August 31, 2023. Monthly rent when the tenancy ended was \$2,750.00, due on the first day of the month. The landlord collected and currently holds in trust the \$1,375.00 deposit. The tenancy agreement was submitted into evidence.

The Tenant texted and the Landlord received the forwarding address on September 1, 2023.

The Tenant did not authorize the Landlord to retain the deposit.

The Landlord submitted his application on September 17, 2023.

The parties completed a move in inspection and signed the condition inspection report (the report).

The parties agreed they scheduled the move out inspection for September 1, 2023 at 10:00 AM. The Tenant texted the Landlord on August 31 at 9:35 PM to inform that she would not be able to attend the move-out inspection due to a family emergency and that the Landlord could meet her at 7:00 AM or complete the inspection alone.

The Landlord affirmed he completed the move out inspection alone and forgot to upload it into evidence. The Tenant stated she never received the move out inspection.

The Landlord is seeking \$105.00, as the Tenant did not clean the 3-bedroom, 1,500 square feet rental unit. The Landlord testified he cleaned the unit for 3 hours and is seeking compensation of \$35.00 per hour, as the baseboards, floor and windows coverings were dirty. The Landlord submitted into evidence 47 photographs taken during the move out inspection.

The Tenant said the rental unit was clean, as she cleaned it for 23 hours before the end of the tenancy.

The Landlord is seeking \$150.00 for painting material and 8 hours of labour at \$55.00 per hour, as the Landlord painted the rental unit for 8 hours and paid “roughly” the amount claimed for the painting material. The Landlord affirmed the Tenant is responsible for holes in the walls and big screws for shelves. The Landlord stated the rental unit was built around February 2022.

The Tenant testified she did not read the tenancy agreement and that she installed two shelves, each one of them with two screws. The Landlord said he did not authorize the Tenant to install the shelves.

### Analysis

Pursuant to Rule of Procedure 6.6, the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Section 7 of the Act states that if a party does not comply with the Act, the Regulations or the tenancy agreement, the non-complying party must compensate the other party for damage or loss that results and that the who claims compensation must minimize the losses.

Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act or the tenancy agreement is due. It states the applicant has to prove the respondent failed to comply with the Act or the agreement, the applicant suffered a loss resulting from the respondent’s non-compliance, and the applicant proves the amount of the loss and reasonably minimized the loss suffered.

### Cleaning

Section 37(2)(a) of the Act states the tenant must reasonably clean the rental unit when the tenancy ends.

Policy Guideline 1 provides guidance regarding cleaning the rental unit when the tenancy ends: "The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard."

Based on the photographs, I find the rental unit was reasonably clean when the tenancy ended.

I dismiss the Landlord's claim for cleaning expenses.

### Wall damage

The photographs submitted show minimum wall damage. I find the Landlord failed to explain why it was necessary to paint the unit for 8 hours for the minimum wall damage.

Furthermore, I find the Landlord's testimony about the painting material expenses vague and the Landlord did not submit receipts for these materials.

Thus, I find the Landlord failed to prove the loss claimed.

I dismiss the Landlord's claim for wall damage.

### Deposit

Section 35 of the Act states:

- (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
  - (a) on or after the day the tenant ceases to occupy the rental unit, or
  - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.

(4)Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5)The landlord may make the inspection and complete and sign the report without the tenant if

(a)the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b)the tenant has abandoned the rental unit.

Regulation 17(3) states “When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.”

Based on the undisputed testimony, I find the Tenant authorized the Landlord to complete the move out inspection alone by informing him at 9:35 PM on August 31, 2023 that the Landlord can meet her at 7:00 AM (instead of the scheduled time) or complete the inspection alone.

The purpose of section 35(2) of the Act and Regulation 17 is to make sure the parties have a reasonable opportunity to attend the move out inspection.

I find it is not reasonable for the Landlord to serve a notice of final opportunity to schedule a move out inspection, in accordance with Regulation 17, when the Tenant authorizes the Landlord to complete the inspection alone at 9:35 PM of the date prior to the scheduled time.

Thus, I find the Landlord complied with section 35(2) and Regulation 17, as the parties scheduled a move out inspection and later the Tenant authorized the Landlord to complete it alone.

Section 36(1) of the Act states the right of a tenant to the return of the deposit is extinguished if the Landlord complied with section 35(2) and the Tenant did not attend the inspection.

Per section 36(1) of the Act, I find the Tenant extinguished her right to the return of the deposit by not attending the move out inspection.

I note the Landlord had to complete the move out inspection report and send it to the Tenant, per Regulation 18. Furthermore, the Landlord had to return to the Tenant the

balance of the deposit within 15 days after receiving the forwarding address, per Section 38(1) of the Act, as the Landlord is only seeking an authorization to retain part of the deposit.

Policy Guideline 17 states: “In cases where both the landlord’s right to retain and the tenant’s right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss.”

As the Tenant breached her obligations first, the Tenant must bear the loss regarding the deposit.

Thus, I dismiss the Tenant’s claim for an order for the return of the deposit, as the Tenant breached section 36(1) of the Act prior to the Landlord’s breach of Regulation 18 and Section 38(1) of the Act.

#### Filing fee

The parties must bear the cost of the filing fee, as the parties were not successful.

#### Conclusion

I dismiss both applications 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 *Act*.

Dated: February 29, 2024

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Residential Tenancy Branch