



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDL-S, LRSD, OLRD, FFL, MNSDS-DR, FFT

### **Introduction**

This hearing dealt with the Applications for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act") by the Landlord on January 18, 2024, and the Tenant on January 24, 2024.

The Landlord applied for:

- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The Tenant applied for:

- a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

### **Issue(s) to be Decided**

1. Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act?
2. Is the Landlord entitled to authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act?
3. Is the Landlord entitled to authorization to recover the filing fee for this application from the Tenant under section 72 of the Act?

4. Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act?
5. Is the Tenant entitled to authorization to recover the filing fee for this application from the Landlord under section 72 of the Act?

## **Background and Evidence**

I have reviewed all evidence, including the testimony of both parties but will refer only to what I find relevant for my decision.

Evidence and testimony provided by both parties indicates that the one-year fixed tenancy began on June 1, 2022, with a monthly rent of \$2,000.00 due on the first of thirty first of each month. A security deposit of \$1,000.00 was paid and is currently held by the Landlord. The tenancy ended on December 31, 2023.

According to Landlord representative W.Z., the Landlord is seeking compensation for damages as follows:

- \$1,575.00 wall preparation and repainting
- \$131.25 to replace curtains
- \$700.00 to repair chips and scratches in bathtub
- \$3,400.00 to replace fridge due to unrepairable scratched panel and handle

Landlord representative W.Z. testified that the figures quoted are based on estimated costs to fix or replace. No quotes were submitted as evidence. Pictures of the unit alleged to represent the pre-move in and post-move out condition of the suite were submitted as evidence by the Landlord.

Landlord representative W.Z., further testified that a move-in inspection report was not completed because the unit was brand new and therefore unnecessary. She further testified that the Tenant declined doing a move-out inspection or appointing a representative to conduct it with the Landlord on her behalf.

According to Tenant representative X.H., the Tenant and Landlord did do a quick pre-move in walk through but confirmed no report was completed. He stated that the Tenant gave 2 months notice to end the tenancy and that the unit was vacate for one week prior to when the tenant relocated out of the country on December 28, 2023. He stated that the Tenant returned the key to the Landlord on December 27, 2023, but the Landlord waited until the Tenant had already left the country before suggesting a move-out inspection date. He disputed the Landlords claims of damage and argued that the

when the unit was vacated there was only normal wear and tear. He also stated that the Tenant provided a forwarding address by email to the Landlord on January 17, 2024.

Landlord representative W.Z. confirmed that the Tenant returned the keys on December 27, 2023, but argued that the Tenant knew that she would not be the one to conduct a move out inspection and that the Tenant could have named a representative when inspection dates were subsequently offered in January 2024. She also confirmed that the Tenant did provide a forwarding address on January 17, 2024.

## **Analysis**

### **Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act?**

Section 35 of the Act establishes that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report.

Section 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has not established a claim for damage to the rental unit or common areas and loss resulting from the tenancy.

I find that the Landlord failed to complete a move-in or move-out report and therefore I am unable to determine the condition of the unit at the start of the tenancy versus at the condition of the unit at the end of the tenancy.

I find, therefore, that the Landlord is not entitled to a monetary award for damage to the rental unit or common areas under sections 32 and 67 of the Act and hereby dismiss the claim without leave to reapply.

### **Is the Landlord entitled to authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under**

**section 38 of the Act? If not, is the Tenant entitled to all or a portion of their security deposit?**

At the commencement of the tenancy, the Landlord did not pursue a condition inspection of the suite with the Tenant, as required by section 23 of the *Act*. (reproduced below)

**23 Condition inspection: start of tenancy or new pet**

1. The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
2. The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
  - a. the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
  - b. a previous inspection was not completed under subsection (1).
3. The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
4. The landlord must complete a condition inspection report in accordance with the regulations.
5. 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.
6. The landlord must make the inspection and complete and sign the report without the tenant if
  - a. the landlord has complied with subsection (3), and
  - b. the tenant does not participate on either occasion.

Pursuant to section 24, the landlord's right to claim against the security deposit **is extinguished** if the landlord does not offer the tenant at least two opportunities for inspection.

Section 38 of the *Act* addresses the return of security deposits.

**38** (1) Except as provided in subsection (3) or (4) (a), **within 15 days after** the later of  
(a) the date the tenancy ends, and  
(b) the date the landlord receives the tenant's forwarding address in writing,  
the landlord must do one of the following:  
(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;  
(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(6) If a landlord does not comply with subsection (1), the landlord  
(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Section 38(5) and (6) is further clarified in Residential Tenancy Branch Policy Guideline PG-17 which says, in part C-3:

*Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*

I find the Landlord did not provide 2 opportunities to inspect the suite with the Tenant at the commencement of the tenancy and the Landlord's right to claim against it was extinguished pursuant to sections 23 and 24. Further, the Landlord did not return the Tenant's security deposit within 15 days of being served with the Tenant's forwarding address at the end of the tenancy, contrary to section 38 of the Act.

The wording of section 38(6) is clear and unequivocal. The Tenant has not waived the doubling of the deposits and is entitled to **\$2,029.78**, including interest, in compensation. Pursuant to section 67 of the Act, I award the tenant a monetary order for this amount.

**Is the Landlord entitled to authorization to recover the filing fee for this application from the Tenant under section 72 of the Act?**

As the Landlord was not successful in this application, the Landlord's application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is dismissed, without leave to reapply.

**Is the Tenant entitled to authorization to recover the filing fee for this application from the Landlord under section 72 of the Act?**

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

**Conclusion**

I grant the Tenant a Monetary Order in the amount of **\$2,129.78** under the following terms:

Monetary Issue	Granted Amount
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a Monetary Order for the Tenant for the return of double their security deposit from the Landlord under section 38 of the Act	\$2,029.78
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$2,129.78</b>

The Tenant is 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, 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 for a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act is dismissed without leave to reapply.

The Landlord's application for authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act is dismissed without leave to reapply.

The Landlord's application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is dismissed, 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: May 22, 2024

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Residential Tenancy Branch