



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDCT, MNSD, FFT, MNDL-S, MNDCL-S, LRSD, OLRD, FFL

### **Introduction**

This hearing dealt with the Applications for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act") by the Tenant's on April 8, 2024, and the Landlords on April 4, 2024.

The Tenant applied for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage 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

The Landlord applied for:

- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 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

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

I find that Landlord C.G. was served on April 17, 2024, by registered mail in accordance with section 89(1) of the Act. The Tenant submitted a copy of the Canada Post tracking number as proof of service.

I find that Tenant S.B. was served on April 26, 2024, by registered mail in accordance with section 89(1) of the Act. The Landlord submitted a copy of the Canada Post tracking number as proof of service.

### **Service of Evidence**

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

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

1. Is the Tenant entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?
2. 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?
3. Is the Landlord entitled to authorization to retain all or a portion of the Tenant's security and pet damage deposits in partial satisfaction of the Monetary Order requested under section 38 of the Act? If not, is the Tenant entitled to a Monetary Order for the return of all or a portion of their security and pet damage deposits under sections 38 and 67 of the Act?
4. Is the Tenant entitled to authorization to recover the filing fee for this application from the Landlord under section 72 of the Act?
5. Is the Landlord entitled to authorization to recover the filing fee for this application from the Tenant 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 tenancy began on March 1, 2024, with a monthly rent of \$1,400.00 due on the first of each month. A security deposit in the amount of \$700.00 and a pet damage deposit in the amount of \$700.00 was paid. The tenancy ended on March 27, 2024.

The Tenant testified that because she had to vacate the rental property due to the fact that the Landlord turned off her water and power, she is seeking \$6000.00 compensation as follows:

- \$2000.00 for hotel accommodations for the period March 26 to April 11, 2024

- storage fees for the month of April 2024 in the amount of \$289.00
- moving expenses – fuel in the amount of \$400.00
- lost wages for herself for four days in the amount of \$1,200.00
- lost wages for B.V. for four days in the amount of \$800.00
- rent for May 2024 at new residence in the amount of \$1,750.00

She stated that she is also seeking the return of her security and pet damage deposits. Copies of invoices for a hotel and storage fees were submitted by the Tenant.

According to the Landlord, she cut off power to the unit because the Tenant cut the lock on the breaker box and was tampering with the RV's power panel. She stated that she advised the Tenant it would be turned back on once the breaker was inspected by an electrician to ensure it was safe. She testified that the Tenant caused a blockage in the unit's toilet system which required servicing by a contractor to restore and that the Tenant's dog damaged the arm of the RV's hide-a-bed couch. She further testified that she had to hire a service provider to inspect the unit's propane system.

The Landlord is seeking compensation as follows:

- electrical inspection in the amount of \$95.00
- clog removal in the amount of \$215.00
- propane inspection in the amount of \$150.00
- change of locks on RV in the amount of \$302.50
- six hours of Landlord's time to clean RV in the amount of \$300.00
- repair or replace hide-a-bed in the amount of \$2,700.00

Copies of invoices for electrical and propane inspection services, toilet blockage removal and new lock installation were submitted by the Landlord as evidence.

The Landlord testified that no move-in inspection report was completed because she had left the form for the Tenant to complete and submit but the Tenant did not complete it. She further testified that a move-out inspection was attempted, and two dates were offered to the Tenant to participate in one but the Tenant did not respond.

The Tenant testified that she did inadvertently cause a blockage in the unit's toilet because the Landlord had not informed her that only a specific type of product was to be used. She testified that she did not tamper with the RV's electrical panel but did cut the lock of the main breaker box in order to turn the breaker back on after her Landlord shut it off because she wanted her to get rid of her dog. She further testified that the

Landlord also removed the water supply hose so that she was unable to access any water.

According to the Tenant the Landlord's removal of services made the RV unlivable and then told her to get off her property and not come back. She stated that she attempted to clean the unit but was unable to do so without any water.

Videos of interactions and copies of email correspondence between the Landlord, the Tenant and the Tenant's mother were submitted as evidence by both parties.

## **Analysis**

### **Is the Tenant entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?**

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

- the Landlord 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 Tenant has established a claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

Section 27 of the Act states:

- 27 (1)**A landlord must not terminate or restrict a service or facility if
- (a)the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
  - (b)providing the service or facility is a material term of the tenancy agreement.

I find that, by terminating the Tenant's water and power services, which included the removal of the water hose connecting the Tenant's rental unit to the water services, the Landlord is in breach of section 27 of the Act. I find that the Landlord has failed to prove that a safety concern existed at the time the services were restricted requiring her to interrupt the provision of power or that she was not required to provide the necessary connecting hose so that the Tenant could have access to the water service.

I find that as a result of the Landlord's actions, the residence lacked the basic services necessary to reside in the unit and therefore the Tenant was forced to seek alternative, temporary shelter for the period March 26 to April 11, 2024, at a cost of \$1,961.12.

I find that the Tenant has not provided evidence to support her claim of lost wages for herself and her father or to demonstrate that she was required to move her belongings out of the rental unit prior to the end of April 2024. I find that, even though I have found that it was necessary to obtain temporary shelter based on the Landlord's breach of the Act, the Tenant nevertheless had the option of filing an application for dispute resolution and leaving her belongings in the unit for the month of April 2024 while she awaited the results of her application, the restoration of the services or found new accommodations and therefore has not proven that the removal and storage of her possessions was required at that time, the conflict in the Landlord Tenant relationship notwithstanding.

I find that the Tenant has not provided a clear rationale as to why the Landlord is liable for compensation for her May 2024 rent at her new place of residence.

Section 67 of the Act states 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.

Therefore, I find the Tenant is entitled to a monetary award for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act, in the amount of \$1,961.12.

**Are the Landlords 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 report and therefore I am unable to determine the condition of the unit at the start of the tenancy versus the condition of the unit at the end of the tenancy, the poor quality of the pictures submitted notwithstanding.

I find that the Landlord has not provided evidence to support her claim that the electrical breaker or propane tanks required inspecting or that the RV locks required replacing.

I find that, while the Tenant did acknowledge plugging the toilet, I accept the Tenant's testimony that she did so because she was not provided with proper instructions regarding the product to be used by the Landlord and therefore the expense incurred by the Landlord to unblock it was not due to the Tenant's negligence or misuse.

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.

**Are the Landlords entitled to authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act? If not, are the Tenants 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. I find however, that as the Tenant did not provide any testimony or evidence that they provided the Landlord with a forwarding address, the doubling provision under section 38(6) of the Act does not apply.

As the Tenant has not agreed to allow the Landlord to retain all or a portion of her security and pet damage deposits and the Landlord has been unsuccessful in their

application for damages under section 67 of the Act, I order the Landlord to repay the Tenant their security and pet damage deposits in the amount of \$1,409.50, including interest, under section 38 of the Act.

**Is the Tenant entitled to recover the filing fee for this application from the Landlords?**

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.

**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.

**Conclusion**

I grant the Tenant a Monetary Order in the amount of **\$3,470.62** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a monetary award for compensation for damages or loss under 67 of the Act	\$1,961.12
a monetary award for the Tenant for the return of their security and pet deposits from the Landlord under section 38 of the Act	\$1,409.50
authorization to recover the filing fee from the Landlord under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$3,470.62</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 31, 2024

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Residential Tenancy Branch