



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for a monetary order for damage and loss pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As both parties were present service of documents was confirmed. The tenant confirmed receipt of the landlord's application, amendment and evidence. The landlord confirmed receipt of the tenant's evidence. Based on the undisputed testimonies of the parties I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

### Background and Evidence

The parties agreed on the following facts. This tenancy began in November, 2015 and ended in May, 2018. The monthly rent at the end of the tenancy was \$876.00 payable on the first of each month. A security deposit of \$422.50 was paid at the start of the tenancy.

The parties participated in a move-in and move-out inspection and prepared a condition inspection report each time. A copy of the condition inspection reports were submitted into evidence. The move-out inspection occurred on May 31, 2018.

The tenant disagreed with the landlord's assessment of damages at the end of the tenancy and refused to sign the move-out condition inspection report. The landlord estimated the cost of cleaning and repairs required to be \$390.00 and withheld that amount. The landlord returned the amount of \$32.50 to the tenant by money order dated June 5, 2018.

The landlord submits that the rental suite required cleaning and repairs after the tenant vacated and seeks authorization to retain the \$390.00 portion of the security deposit for this tenancy. In addition the landlord submits that they incurred costs for preparing for the dispute resolution hearing by printing out photographic evidence, and serving the respondent. The landlord seeks a monetary award in the amount of \$91.01 for the costs related to the application.

The tenant disputes the landlord's assessment of damages. The tenant testified that she had cleaned the rental suite and it was in an acceptable condition. The tenant did not give any written authorization that the landlord may retain any portion of the deposits. The tenant further submits that the landlord entered the rental suite without their authorization in May, 2018 and in doing so breached the tenancy agreement and the *Act*. The tenant argues that the right of the landlord to claim against the deposits were extinguished and the tenancy agreement cancelled due to their breach.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security and pet damage deposit in full or file for dispute resolution for authorization to retain the deposits 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security and pet damage deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security and pet damage deposit as per section 38(4)(a).

In the case at hand the parties testified that this tenancy ended on May 31, 2018 and the tenant provided a forwarding address on that date. The landlord returned \$32.50 of the security deposit to the tenant by a money order dated June 5, 2018 and applied for

authorization to retain the remaining amount of the deposit on June 14, 2018. I find that the landlord was within the 15 days provided under the Act to file their application to keep the deposits.

I accept the landlord's evidence that the rental unit required some repairs, cleaning and maintenance after the tenancy. I find that the landlord's photographs of the suite to be sufficient to show that the rental unit suffered damages more than the wear and tear that would be expected after a tenancy. I do not find the tenant's submission that the photographs are inaccurate and were taken at an unspecified time to be supported in the evidence or particularly persuasive. I accept the landlord's assessment of damages to the rental suite and the cost of repairs and cleaning to be \$390.00.

I do not find the tenant's submission that the landlord, by breaching the tenancy agreement and entering the suite without prior authorization, extinguished their right to claim against the deposits to be supported by any provision of the *Act* or regulations.

While the landlord seeks a monetary award in the amount of \$91.01 for various expenditures related to pursuing this application, I find that the costs of serving the tenant and printing evidence are not losses incurred as a result of a breach of the *Act*, regulations or tenancy agreement. These are simply the costs related to pursuing a claim and are not recoverable under the *Act*. Consequently, I dismiss this portion of the landlord's application.

I issue a monetary award in the amount of \$390.00 in the landlord's favour. In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the \$390.00 security deposit in full satisfaction of the monetary award issued in the landlord's favour.

## Conclusion

The landlord is authorized to retain the amount of \$390.00 from the security deposit for this tenancy.

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 15, 2018

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Residential Tenancy Branch