



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for damages to the rental unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions. It should be noted that the tenants evidence submitted is primarily related to the tenants' application for compensation for loss of quiet enjoyment, which is currently scheduled for a later date.

### Preliminary and Procedural matter

At the outset of the hearing, it was confirmed that the landlords that they were waiving the amount of their claim that exceeded the amount of \$35,000.00.

### Issues to be Decided

Are the landlords entitled to a monetary order for damages to the rental unit?  
Are the landlords entitled to keep the security deposit?

### Background and Evidence

The parties agreed that the tenancy began on September 1, 2018. Rent in the amount of \$3,382.00 was payable on the first of each month. The tenants paid a security deposit of \$1,650.00. The tenancy ended on March 31, 2020.

The landlords claim as follows:

a.	Replacement windows actual cost \$37,115.21	\$35,000.00
b.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$35,100.00</b>

The landlord's agent MN testified that the strata was under going a large window replacement project on the heritage building. MN stated that the new windows have installed window restrictors, which are there for safety reasons as they limit the opening of the window and is requirement of the city bylaws.

MN stated that in July 2019, while the window project was still ongoing that the tenant removed the windows restrictors, which voided the warranty and damaged the windows. The agent stated that the tenant did attempt to reinstall the restrictors; however, that did not reinstate the warranty and would not have passed the city inspection which was under a permit, if not replaced.

The landlords' agent stated that they tried to claim this on their insurance; however, that claim was denied. The landlords' agent stated that the landlord had to pay the amount of \$37,115.21 to have the windows replaced.

The tenant JL testified that they did remove the window restrictors from the windows. JL stated that this was done because there was no air circulation in the rental unit as the building was wrapped in plastic and the venting system was not working. JL stated that they did not know that this would cause the warranty to be voided or that the windows would have to be replaced. JL stated that they thought the worst outcome would be that they would have to pay a strata fine, which they were fully willing to pay.

The tenant JL testified that they tried to claim this on their insurance; however, that was unsuccessful.

Counsel for the tenant argued that this is a warranty issue and that this matter is outside the jurisdiction of the Residential Tenancy Act.

Counsel for the tenant argued that there were more than 30 units having their windows replace in the building and it was impossible for the tenant to foresee that by removing only two of the window restrictors would have such a high consequence or that this would void the warranty on all of the windows. Counsel submit that causation must be considered as there was no intent to damage the windows.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 7(2) of the Act states a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 32(3) of the Act, states, a tenant of a rental unit 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.

The Residential Tenancy Policy Guideline (PG) 1, RENOVATIONS AND CHANGES TO RENTAL UNIT states:

Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition. 2. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its

original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

In this case, legal counsel submits the Residential Tenancy Branch has no jurisdiction as this matter is a warranty issue. I do not accept that argument. This is an issue where the tenant admitted they made changes to the rental unit, when they removed the safety feature of the windows, the restrictors, without the consent of the landlord. I find the tenants breached the Act.

While I accept the tenants may not have expected the consequence would be so great, I am satisfied they clearly knew this was wrong as they expected to only receive a strata fine.

But for the actions of the tenants', when they tampered with the safety mechanism of the windows none of this would have occurred. The windows would not have had to be replaced, which I find the replacement of the windows reasonable when the safety mechanism were tampered with. These are not simply a minor feature of a window, such as a latch. These are installed by a qualified person and is a safety feature to ensure that someone does not fall out of a window, such as a young child.

But for the actions of the tenants, the landlord would not have suffered a loss as the landlord had to pay for the removal of the windows, which included the removing of flashing/cladding, scaffolding rental, stucco repair, new materials, custom manufacturing of the new windows, and installation for a total cost of \$37,115.21.

PG#18 (c) Compensation states, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. However, I must consider whether the landlord made reasonable efforts to mitigate the loss, pursuant to section 7(2) of the Act.

I find the landlords mitigated the loss when they tried to claim this on their insurance which was denied, and when they lowered their claim to fall within the jurisdiction of the Residential Tenancy Act.

Based on the above, I find the landlords are entitled to recover the cost of the window replacement in the reduced amount of **\$35,000.00**.

I find that the landlords have established a total monetary claim of **\$35,100.00**, comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$1,650.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$33,450.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

### Conclusion

The landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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: August 05, 2020

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Residential Tenancy Branch