



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the *Act*;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package via Canada Post Registered Mail on October 15, 2020. Both parties confirmed the landlord personally served the tenant with her submitted 100 page (1 document evidence) file on January 13, 2020. Both parties confirmed the tenant served the landlord with the submitted 7 document evidence files via Canada Post Registered Mail on October 24, 2020. Both parties confirmed the tenant served the landlord with her notice of hearing package via Canada Post Registered Mail on October 24, 2020. Both parties confirmed the tenant served the landlord with her submitted 28 document evidence files via Canada Post Registered Mail on January 14, 2020. I accept the

undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

During the hearing the tenant's monetary claim was clarified. The tenant stated that she was not applying for return of double the security deposit, but instead return of a \$625.00 security deposit paid for this tenancy and another \$625.00 for return of a security deposit for a different tenancy. Both parties were advised that as the second application for return of a \$625.00 security deposit is related to a different tenancy, that application is unrelated to this application for return of a \$625.00 security deposit. As such, the second request is dismissed with leave to reapply. The tenant was directed to file a separate application for that tenancy.

The tenant's application shall proceed on the request for return of the original security deposit and recovery of the filing fee for \$725.00.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage and recovery of the filing fee?  
Is the landlord entitled to retain all or part of the security deposit?  
Is the tenant entitled to return of all or part of the security deposit and recovery of the filing fee?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

The landlord seeks a clarified monetary claim of \$780.54 which consists of:

\$575.00	Labour hours, 23 hours at \$25.00 per hour
\$38.76	Replace Damaged Kitchen Faucet
\$16.78	Replace Damaged doorknob
\$50.00	Paint and Supplies
\$100.00	Filing Fee

The landlord claims that the tenant vacated the rental unit leaving it dirty and damaged requiring extensive cleaning and repairs. The landlord stated that the rental unit needed to be re-painted due to extensive marks to the walls. The landlord stated that the rental

unit was in excellent condition at the start of the tenancy as per a submitted copy of the signed condition inspection report for the move-in.

The landlord submitted a handwritten “service summary” copied from the witness, D.C.’s written statement. The landlord stated that 23 hours of labor was spent cleaning the rental unit; repairing broken curtain rod hardware (missing screws); wall repair (fill holes, sand and prime); paint 4 walls; paint cupboard drawers; replace broken kitchen faucet; replace missing bedroom door handle; clean stove; clean stove fan area; repair fridge/freezer; and wash windows. The landlord has submitted 81 photographs showing the condition on the rental unit at the end of tenancy which shows personal items left throughout; wall damage; dirty cupboards; scrape marks on walls; nail holes in walls; marks on walls; dirty toilet; dirty oven; water damaged window sill (X2); dirty floors; re-installed curtain rods. The landlord stated that all of the paint and supplies used are part of an excess of material previously bought in bulk for situations like this to save costs and time. The landlord stated she maintains a stock of supplies to maintain the rental property.

The tenant disputed the landlord’s claims arguing that the landlord has failed to provide any receipts and argues that the “damage” referred to by the landlord is nothing more than normal wear and tear. The tenant provided an example of such of the holes/marks in the walls. The tenant also argues that the landlord has failed to provide any evidence of work completed.

The landlord called her witness, D.C. who provided testimony that the landlord’s “service summary” is a copy of a “service summary” provided by the witness to the landlord. The witness, D.C. stated that he performed all the labour hours as detailed in the “service summary” for cleaning and repair work.

The tenant agreed to the landlord’s claim of \$38.76 for replacement of a broken faucet caused by the tenant’s carpet cleaner. The tenant disputed the landlord’s claim that the doorknob was missing from the master bedroom, but from a different bedroom, but confirmed that one was replaced by the witness, D.C. at her request. The tenant confirmed that there were screw holes left in the wall at the end of tenancy. The tenant argues that the remaining issues noted by the landlord were all normal wear and tear.

The tenant seeks a clarified monetary claim of \$725.00 which consists of:

\$625.00	Return of Original Security Deposit
\$100.00	Filing Fee

The tenant seeks return of the original \$625.00 security deposit as the landlord has refused to return in. The landlord has filed an application for a claim of damage and to offset that claim against the security deposit. Both parties confirmed the tenant provided her forwarding address in writing for return of the \$625.00 security deposit on September 28, 2020.

The landlord filed her claim for damage(s) on October 8, 2020. The landlord claims that the tenancy ended on September 30, 2020, however the tenant claims that the tenancy ended on September 28, 2020.

### Analysis

Section 67 of the *Act* establishes 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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I accept the affirmed testimony of both parties and find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. Despite the landlord not providing any invoices or receipts for any expenses incurred, the landlord provided sufficient evidence that the paint and supplies used were part of an excess of stock previously bought by the landlord to help make repairs and paint for situations like this in the rental property. The landlord has provided sufficient evidence through the testimony of the witness regarding the "service summary" that the work was carried out and that it required 23 hours of labour. The landlord also submitted 81 photographs as confirmation of the condition of the rental unit in contrast with the submitted copy of the condition inspection report for the move-in that was completed. On this basis, I am satisfied that the landlord has established a claim for \$780.54 as filed.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In this case, both parties confirmed that the landlord holds the \$625.00 security deposit. Both parties confirmed the tenant provided her forwarding address in writing to the landlord on September 28, 2020. A review of the landlord's application shows that it was filed on October 8, 2020. I find that despite the landlord's claim that the tenancy ended on September 30, 2020 and the tenant's claim that the tenancy ended on September 28, 2020, the landlord filed her application for damages against the security deposit within the allowed 15 day period. As such, the tenant's application is dismissed.

I authorize the landlord to retain the \$625.00 security deposit in partial satisfaction of the landlord's \$780.54 claim.

### Conclusion

The landlord is granted a monetary order for \$155.54.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: February 4, 2021

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Residential Tenancy Branch