



# 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 the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The tenants confirmed receipt of the landlords' materials. The landlords disputed that they were served with the tenants' evidentiary materials. The evidence of the tenants consists of email correspondence between the parties. As such I find that the landlords would have had an opportunity to receive these pieces of evidence on earlier occasions and there would be no undue prejudice or breach of the principles of procedural fairness and natural justice to allow their inclusion. I advised the parties that if the tenants made reference to any piece of evidence with which the landlord was unfamiliar, the landlord was at liberty to apply to have it excluded. I have taken this approach after considering the guidance provided by Rule 3.17 of the Rules of Procedure, which outlines the circumstances whereby an Arbitrator can consider late evidence.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to recover their filing fee from the tenants?

Background and Evidence

The parties agree on the following facts. This tenancy began on December 1, 2020 and ended January 31, 2021. The tenants provided a security deposit of \$800.00 and pet damage deposit of \$800.00 at the start of the tenancy. The landlord has returned \$1,049.75 of the deposits and retains \$550.25.

The landlord submits that there is a verbal agreement between the parties wherein the tenants are obligated to pay 40% of the utilities for the tenancy. The landlords say that there is an outstanding utility balance of \$450.25 arising from this tenancy. The landlords submitted into evidence copies of the utility bills showing the total amount charged during the tenancy.

The tenants agree to a payment of \$450.25 for outstanding utilities. The tenants submit that they were always willing to pay the utilities pursuant to the tenancy agreement and there was no need for the landlords to file an application for dispute resolution. As such, the tenants dispute that the landlords should be entitled to recovery of the filing fee as the present hearing was unnecessary.

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.

As the parties agree that the landlords are entitled to a payment of \$450.25, 40% of the total utilities for the rental unit during the tenancy, I find that the landlord has established their claim on a balance of probabilities. I therefore issue a monetary award in that amount in the landlords' favour.

Pursuant to section 72 of the Act, I have the authority to order recovery of filing fees paid to commence a dispute resolution proceeding. In the present circumstances I find that the landlord was successful in their application seeking a monetary award. I find that the landlord acted in accordance with section 38 of the Act to seek authorization to retain an amount from the security deposit within 15 days of the tenancy ending and receiving the forwarding address from the tenant. I find that the email correspondence from the tenant does not clearly state that the landlord is authorized to make a deduction from the security and pet damage deposit or the exact amount authorized by the tenants and so filing an application for dispute resolution was prudent and appropriate.

Accordingly, as the landlord was successful in their application they are entitled to recover their filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the Act, I allow the landlord to retain the amount of \$550.25 of the tenants' security deposit in full satisfaction of the monetary award issued in the landlord's favour

### Conclusion

The landlord is authorized to retain \$550.25 of 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: June 11, 2021

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Residential Tenancy Branch