



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNDL, FFL

### Introduction

This hearing was convened by way of conference call concerning an amended application made by the landlord seeking an Order of Possession for cause; a monetary order for damage to the rental unit or property; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The landlord was also accompanied by his spouse, who was introduced as a co-landlord, but the person did not testify or take part in the hearing. The parties were given the opportunity to question each other and give submissions.

At the commencement of the hearing the parties advised that the tenant vacated the rental unit on June 30, 2021 and the landlord withdraws the application for an Order of Possession.

During the course of the hearing, the landlord indicated that the only evidence the landlord received from the tenant was a photograph of the driveway with an oil leak taken on August 9, 2021. The tenant disputed that and was permitted to provide proof that the landlord was served with all of the tenant's evidence after the hearing had concluded. I now have copies of the emails with attachments, and I find that the landlord has been served with the tenant's evidence in accordance with the *Residential Tenancy Act* and Rules of Procedure.

All evidence provided by the parties has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

The issues remaining to be decided are:

- has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on April 3, 2017 and reverted to a month-to-month tenancy after June 30, 2017, which ultimately ended on June 30, 2021. Rent in the amount of \$900.00 was originally payable on the 30<sup>th</sup> day of each month, in advance for the following month, but was raised during the tenancy to \$923.00 per month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$450.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite, and the landlords reside in the upper level of the home. There is a written tenancy agreement, but a copy has not been provided for this hearing.

The landlord further testified that a move-in condition inspection report was completed at the beginning of the tenancy, but was not signed by the tenant, in error, so a copy has not been provided for this hearing. No move-out condition inspection report was completed at the end of the tenancy, but the parties conducted a walk-through. The landlord received the tenant's forwarding address in writing on June 30, 2021.

The landlord testified that he is a retired general contractor and custom built the house to retire in. On May 7, 2021 the landlord gave a letter to the tenant asking to have the driveway cleaned. The tenant didn't do so and oil that had dripped onto the concrete driveway remained there for 2 more weeks. The tenant said she would get a friend to clean it, so the landlord didn't clean it, however the oil was left there too long so it saturated into the concrete. The landlord testified that 1 section between control joints will cost \$1,065.00 for the material and truck, and in order to replace it, a jackhammer is required which will cost \$450.00 including disposal. Another \$450.00 minimum is required to hire a person to do the jackhammering and replacing. The landlord gave an Invoice to the tenant dated June 17, 2020 for \$413.90 for: 2 hours of the landlord's time pressure washing at \$50.00 per hour, 2 hours of the landlord's time sealing for \$50.00 per hour, and \$213.90 for another invoice also provided from a building supply store for sealer "clearglaze" and "shark grip." The landlord tried to clean it and seal it, but that was a temporary fix only. The only way to repair it is to remove it, then seal it to match the rest of the drive way. It is colored concrete.

The landlord further testified that during a monthly inspection the landlord saw a broken tub drain, which required a plumber to repair. The metal drain must have been plugged and forced out. The landlord claims \$200.00, but no invoice has been provided for this hearing.

The landlord also claims \$180.00 for repairing a gouge in the closet wall that had to be filled 3 times. The tenant made an attempt to fix it, but it was not done correctly and has not yet been fully repaired, however the landlord testified that he builds high-end buildings, and the minimum estimate for the repair is \$180.00. The rental unit was last painted just before the tenant moved in, and the landlord used the higher quality of paint that should last a minimum of 8 years.

The ceiling was also damaged at the end of the tenancy. The area damaged was in a 5 foot heated storage space that was filled from floor to ceiling, stuffed with skates and roller blades. Removal damaged the ceiling by stuffing it full. The landlord had inspected and pointed out to the tenant that items were stuffed in and ventilation was needed. The landlord was really shocked the way it was all packed in and the landlord claims \$180.00 for the repair, but testified it has not yet been completed.

The landlord's total claim is \$2,938.90 and seeks to keep the security deposit in partial satisfaction.

**The tenant** testified that her car leaked oil in the driveway, and disputes that the landlord ever offered to clean it. The tenant was surprised to get a letter about the tenant have the driveway professionally cleaned. The tenant tried to contact a couple of places but it was during the beginning of the COVID pandemic so no one was available. The tenant's friend then attempted to clean it but was not successful. The parties agreed on an amount of \$175.00 for the repair if the tenant didn't park there anymore, which she didn't from January until move-out, and the landlord told the tenant not to lose sleep over it.

The tenant also testified that the tub drain was not damaged by the tenant, but was in that condition at the beginning of the tenancy. A photograph has been provided for this hearing.

The tenant fixed the damage to the closet wall and to the storage room ceiling. Before and after photographs have been provided for this hearing, as well as a photograph of the unfinished storage room and ceiling vent.

The tenant further testified that she seeks double the amount of the security deposit.

### Analysis

The *Residential Tenancy Act* states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. The onus is on the landlord to ensure that the reports are completed in accordance with the regulations, and if the landlord fails to do so, the landlord's right to claim against the security deposit for damages is extinguished. I accept that there was a move-in condition inspection report completed by the parties, albeit not signed by the tenant, but no move-out condition inspection report was completed at all. Therefore, I find that the landlord's right to claim against the security deposit for damages is extinguished.

The landlord's right to make claim for damages is not extinguished, but the landlord had an obligation to return the security deposit to the tenant within 15 days of the later of the date the tenancy ended or the date the landlord received the tenant's forwarding address in writing. If a landlord fails to do so, the landlord must repay double the amount to the tenant.

Where a party makes a monetary claim for damages as against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

A tenant is required to repair any damage caused by a tenant.

In this case, the landlord was not satisfied with the work the tenant did to the closet wall or the storage room ceiling and claims \$180.00 for each, but has not provided any evidence of the actual cost. Therefore, I find that the landlord has failed to satisfy element 3 in the test for damages.

The landlord testified that a move-in condition inspection report was completed but didn't provide a copy because it was erroneously not signed by the tenant. However, if the landlord had provided a copy, it is possible that the tenant would have accepted that it was the condition at the beginning of the tenancy. However, the tenant testified that the drain in the tub was in the same condition at the end of the tenancy as in the beginning of the tenancy. By not providing the move-in condition inspection report, the

landlord has not established that the drain plug was not damaged at the beginning of the tenancy. The landlord claims \$200.00, but has not provided any evidence of the actual cost, and I find that the landlord has failed to establish elements 1, 2 and 3 in the test for damages.

With respect to the claim for concrete, I have read the letters and other evidence provided for this hearing. I accept that the tenant left the oil stain for too long and it saturated into the concrete. The landlord testified that it will cost \$1,065.00, but there is no evidence to substantiate that. It is not sufficient to testify that the landlord is a professional builder and estimate the costs of the repair. The landlord has provided an invoice for \$213.90 and I accept the \$200.00 claim for the landlord's time.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

With respect to the security deposit, I refer to Residential Tenancy Policy Guideline #17 – Security Deposit and Set Off which states, in part:

### **C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION**

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit; or
- a tenant's application for the return of the deposit.

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

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.
- whether or not the landlord may have a valid monetary claim.

In this case, 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*. The landlord testified that the tenant's forwarding address was received in writing on June 30, 2021 and the tenancy ended the same day. The landlord did not return any portion of the security deposit, and therefore, I find that the landlord must repay double the amount, or \$900.00.

Having found that the landlord is owed \$513.90 and must repay \$900.00 for double the amount of the security deposit, I set off those amounts and I grant a monetary order in favour of the tenant for the difference of \$386.10.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$386.10.

This order is final and binding and may be enforced.

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 27, 2021

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Residential Tenancy Branch