



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      LL: MNDL-S, FFL  
                             TT: MNSDS-DR, FFT

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application for Dispute Resolution was made on May 7, 2021 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was made on June 4, 2021 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order granting the return of all or part of the security deposit; and
- an order granting recovery of the filing fee.

The Landlord, the Tenant, and the Tenant’s Advocate A.M. attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective Application packages and documentary evidence. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
3. Is the Landlord entitled to retain the Tenant's security deposit pursuant to Section 38 of the *Act*?
4. Is the Tenant entitled to an order granting the return of the security deposit, pursuant to Section 38 of the *Act*?
5. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following; the tenancy started on March 1, 2021. During the tenancy, the Tenant was required to pay rent in the amount of \$1,750.00 which was due to be paid to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$875.00 which the Landlord continues to hold. The tenancy ended on April 29, 2021. The Landlord received the Tenant's forwarding address in writing on April 29, 2021.

### Landlord's Claims

The Landlord provided a monetary worksheet in his documentary evidence, containing three monetary claims totalling \$2,066.21. The Landlord stated that the claims relate to plumbing repairs which were completed to repair a corroded and collapsed drainpipe. The Landlord stated that the corrosion and collapse of the drainpipe can be attributed to the Tenant's use of Drano in an attempt to remedy an issue with the toilet. The Landlord provided pictures of the work completed as well as invoices in support of the cost of repairs.

The Landlord confirmed during the hearing that he did not provide any evidence confirming the Drano was the contributing factor to the drainpipe collapsing, however, he stated that he did not have any issues with the drainpipe prior to the tenancy.

Furthermore, the Landlord stated that he had the drainpipes inspected two years ago with no issues reported. The Landlord provided the inspection details in support.

The Tenant responded by stating that she used 4ml of Drano on one occasion and that it states on the packaging that it is safe to use in metal pipes. The Tenant called witness T.G. who stated that he has been a certified Plumber for the past 40 years. T.G. stated that cast iron ages over time and becomes corroded from the inside out. T.G. stated that it is not possible that the Drano used by the Tenant in the short duration of the tenancy caused the drainpipe to collapse. The Tenant stated that the Landlord should be responsible for paying the costs of maintaining the aging plumbing system.

### Tenant's Claims

The Tenant stated that the Landlord extinguished his right to claiming for the Tenant's security deposit. As such, the Tenant is claiming for the return of double her security deposit. During the hearing, the parties confirmed that there was no condition inspection completed at the start of the tenancy. The parties stated that they walked through the rental unit at the end of the tenancy but confirmed that no condition inspection report was ever generated. The Landlord stated that the Tenant was unwilling to accept responsibility for the damage to the drainpipe at the end of the tenancy, as such, he did not complete a condition inspection report with the Tenant.

### Analysis

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

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;

3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

#### Landlord's Claims

The Landlord has claimed for monetary compensation as he feels as though the Tenant's use of Drano caused the drainpipe to corrode and collapse, requiring repairs in the amount of \$2,066.21. In this case, I find that the Landlord has provided insufficient evidence to demonstrate that the Drano caused the corrosion and collapse of the drainpipe. Instead, I find that it is more likely that the age of the drainpipe led to the corrosion and eventual collapse of the drainpipe. I find that the Tenant has not breached the *Act*. As such, I dismiss the Landlord's claim for monetary compensation without leave to reapply. As the Landlord was not successful, I find that they are not entitled to the return of the filing fee.

#### The Tenants' Claim

The Tenant is claiming for the return of double her security deposit. The Tenant stated that the Landlord extinguished his right to claiming for the Tenant's security deposit as he did not complete a condition inspection report at the start, or at the end of the tenancy. Furthermore, the Tenant stated that she did not consent to the Landlord retaining any portion of the deposit.

Sections 23 and 24 of the *Act* establish the rules whereby joint move-in condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 23 of the *Act* reads in part as follows:

- 23** (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4) The landlord must complete a condition inspection report in accordance with the regulations.
- (5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (6) The landlord must make the inspection and complete and sign the report without the tenant if
- (a) the landlord has complied with subsection (3), and
  - (b) the tenant does not participate on either occasion...

Section 24(2) of the Act reads in part as follows:

**Consequences for tenant and landlord if report requirements not met**

- 24** (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 23 (3) [*2 opportunities for inspection*],
  - (b) having complied with section 23 (3), does not participate on either occasion, or
  - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...

Sections 36 and 37 of the *Act* establish similar provisions regarding a joint move-out condition inspection and the report to be produced by the landlord(s) regarding that inspection.

In this case, the Landlord testified that they did not prepare a report of their joint move-in condition inspection with the Tenant when this tenancy began. The Tenant also denies that any such joint move-in condition inspection occurred when the Tenant took

possession of the rental unit. On the basis of the Landlord's admission that they did not create a joint move-in condition inspection report and provide it to the Tenant and in accordance with paragraph 24(2)(c) of the *Act* as outlined above, I find that the Landlords' right to apply to retain the tenant's security deposit was extinguished at the beginning of this tenancy.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing as long as the landlord's right to apply to retain the deposit had not been extinguished. If that does not occur or if the landlord applies to retain the deposits within the 15 day time period but the landlord's right to apply to retain the tenant's deposit had already been extinguished, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* that is double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy.

In this case, while the Landlord filed the application to retain the deposit within 15 days of receiving the Tenant's forwarding address, the Landlords' right to retain the deposit was extinguished at the beginning of this tenancy pursuant to section 24(2) of the *Act*. I further find that the Tenant did not consent to the Landlord retaining any portion of her deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

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 not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- 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*;
- If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;
- If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the *Act*;

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

Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the Tenant is therefore entitled to a monetary order amounting to double the value of their security deposit. I accept that the Landlord is currently holding the Tenant's security deposit in the amount of \$875.00. As such, I find that the Tenant is entitled to (\$875.00 x 2 = **\$1,750.00**). As the Tenant was successful with her Application, I find that she is entitled to recover the **\$100.00** filing fee paid to make the Application.

### Conclusion

The Landlord's Application is dismissed without leave to reapply. Pursuant to sections 38, 67, and 72 of the *Act*, the Tenant is granted a monetary order in the amount of \$1,850.00. The monetary order must be served on the Landlord and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 05, 2021

---

Residential Tenancy Branch