



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      For the Landlord: MNDL-S, FFL  
                              For the Tenant: MNSD, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The Landlord's application pursuant to the Act is for:

- a monetary order for compensation for damage and loss under the Act, the Regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the security and pet damage deposits (the deposits), under Section 38; and
- an authorization to recover the filing fee, pursuant to section 72.

The Tenant's application pursuant to the Act is for:

- an order for the return of the deposits, pursuant to section 38; and
- an authorization to recover the filing fee, pursuant to section 72.

I left the teleconference connection open until 1:58 pm to enable the Tenant to call into this teleconference hearing scheduled for 1:30 pm. The Tenant did not attend the hearing. Landlord WG (the Landlord) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

### Preliminary Issue – Service of the Landlord's Application

The Landlord affirmed the Tenant did not provide the forwarding address. The Landlord learned the Tenant's forwarding address when she received the notice of hearing for the Tenant's previous application \*\*\*\*\*661 (hereinafter, the Tenant's previous application).

The decision of the Tenant's previous application dated February 22, 2023 states the Tenant's forwarding address is the address recorded in that application's notice of hearing and on the cover page of this decision and serves the forwarding address to the Landlord:

I informed both parties that the date of the hearing, January 26, 2023, serves as the date that the landlord was served with the tenant's forwarding address, and that that the security and pet damage deposit must be dealt with in accordance with section 38 of the Act.

The Landlord registered mailed the notice of hearing and the evidence of the Landlord's application (the materials) to the Tenant's forwarding address on February 10, 2023 and a second package of evidence on April 13. The tracking numbers are recorded on the cover page of this decision.

Policy Guideline 12 states: "The respondent's address may be found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an application for dispute resolution."

Based on the Landlord's convincing testimony and the Tenant's previous application notice of hearing and decision, I find the Landlord proved the Tenant's forwarding address is the address recorded on the cover page of this decision.

Based on the Landlord's convincing testimony and the tracking numbers, I find the Landlord served the materials in accordance with section 89(1)(c) of the Act.

Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5<sup>th</sup> day after it is mailed. Given the evidence of registered mail, I deem the Tenant received the materials on February 15, 2023 and the second package of evidence on April 18.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

#### Preliminary Issue – Tenant's application

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

Rule 7 – During the hearing

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any attendance at this hearing by the Tenant, I order the Tenant's application dismissed without leave to reapply.

Issues to be Decided

Is the Landlord entitled to:

1. A monetary order for damage or loss?
2. An authorization to retain the deposits?
3. An authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the Landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the Landlord's obligation to present the evidence to substantiate the application.

The Landlord affirmed the tenancy started on January 1, 2021 and ended on April 21, 2022. Monthly rent when the tenancy ended was \$2,400.00, due on the first day of the month. The Landlord collected and holds a security deposit of \$1,200.00 and a pet deposit of \$600.00. The Landlord submitted the tenancy agreement into evidence.

The Landlord is claiming \$990.00, as the Tenant did not clean the 1,300 square foot, 3 bedroom rental unit. The Landlord stated the rental unit was very dirty and she paid the amount claimed to clean the bathtubs, sinks, toilets, cabinets, windows coverings, and counters. The Landlord submitted a receipt for the amount claimed for 22 hours of cleaning at the hourly rate of \$45.00 and 33 photographs taken when the tenancy ended.

The Landlord is claiming \$240.00, as the Tenant did not clean the rental unit's carpet. The Landlord testified the carpet was very dirty, as the Tenant had a large dog and

there was a large amount of dog fur in the rental unit's carpet. The Landlord submitted a receipt for the amount claimed.

The Landlord is claiming \$145.71, as the Tenant intentionally damaged the Landlord's drilling machine. The Landlord submitted a photograph showing the drilling machine in a bathtub filled with water. The Landlord purchased a cheaper model to substitute the damaged drilling machine and submitted a receipt for the amount claimed.

The Landlord is claiming \$18.98, as the Tenant's dog chewed and damaged the rental unit's front door weather strip. The Landlord submitted a photograph showing a damaged weather strip and a receipt for the amount claimed.

The Landlord submitted a monetary order worksheet indicating a total claim in the amount of \$1,494.69.

### Analysis

Section 7 of the Act states that if a party does not comply with the Act, the Regulations or the tenancy agreement, the non-complying party must compensate the other party for damage or loss that results and that the who claims compensation must minimize the losses.

Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act or the tenancy agreement is due. It states the applicant has to prove the respondent failed to comply with the Act or the agreement, the applicant suffered a loss resulting from the respondent's non-compliance, and the applicant proves the amount of the loss and reasonably minimized the loss suffered.

Pursuant to Rule of Procedure 6.6, the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

### Cleaning

Section 37(2)(a) of the Act states the tenant must reasonably clean the rental unit when the tenancy ends.

Based on the Landlord's convincing and undisputed testimony, the 33 photographs and the receipt, I find the Landlord proved, on a balance of probabilities, that the Tenant breached section 37(2)(a) of the Act by failing to clean the rental unit's bathtubs, sinks, toilets, cabinets, windows coverings, and counters and the Landlord suffered the loss in the amount claimed.

I award the Landlord \$990.00.

#### Carpet cleaning

Based on the Landlord's convincing and undisputed testimony and the receipt, I find the Landlord proved, on a balance of probabilities, that the Tenant breached section 37(2)(a) of the Act by failing to clean the rental unit's carpets and the Landlord suffered the loss in the amount claimed.

I award the Landlord \$240.00.

#### Drilling machine

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."

Based on the Landlord's convincing and undisputed testimony, the photograph and the receipt, I find the Landlord proved, on a balance of probabilities, that the Tenant breached section 32(3) of the Act by damaging the Landlord's drilling machine and the Landlord suffered the loss in the amount claimed.

I award the Landlord \$145.71.

#### Weather strip

Based on the Landlord's convincing and undisputed testimony, the photograph and the receipt, I find the Landlord proved, on a balance of probabilities, that the Tenant breached section 32(3) of the Act by not repairing the damaged weather strip and the Landlord suffered the loss in the amount claimed.

I award the Landlord \$18.98.

Filing fee and deposit

As the landlord was successful in this application, the landlord is entitled to recover the \$100.00 filing fee.

In summary:

Item	Amount \$
Cleaning	990.00
Carpet cleaning	240.00
Drill machine	145.71
Weather strip	18.98
Filing fee	100.00
Total:	1,494.69

Policy Guideline 17 states: "The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord."

Per section 72(2)(b) of the Act, I authorize the Landlord to retain the \$1,494.69 from the deposits in total satisfaction of the monetary award issued in this application.

If the landlord does not have the tenant's agreement in writing to retain all or a portion of the security and pet damage deposits, section 38(1) of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

Policy Guideline 17 also states: “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.”

The Landlord received the forwarding address on January 26, 2023 and submitted this application on January 30.

Considering the above, I find the Landlord applied for dispute resolution within the timeframe of section 38(1) of the Act. I order the Landlord to pay the Tenant the balance of the deposits in the amount of \$305.31 (\$1,800.00 subtracted from \$1,494.69).

### Conclusion

Pursuant to sections 38 and 72 of the Act, I authorize the Landlord to retain \$1,494.69 from the deposits and order the Landlord to return to the Tenant the deposits’ balance in the amount of \$305.31.

The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this 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 Act.

Dated: October 25, 2023

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Residential Tenancy Branch