



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

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

### Introduction

This hearing dealt with cross-applications filed by the parties. On January 27, 2023, the Landlords made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On June 15, 2023, the Tenant made an Application for Dispute Resolution seeking a Monetary Order for a return of the security deposit pursuant to Section 38 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

C.W. attended the hearing as an agent for the Landlords, and the Tenant attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of the parties’ Notice of Hearing and evidence packages was discussed, and the only issue that arose was that C.W. served evidence to the Tenant by registered mail on September 25, 2023, to the mailing address that the Tenant noted on her Application. While the Tenant claimed that no one told her about this package, she confirmed that the address that this package was sent to was correct. Given this, I am

satisfied that the Tenant was deemed to have received this evidence five days after it was mailed. As such, I have accepted both parties' evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to apply the security deposit towards this debt?
- Are the Landlords entitled to recover the filing fee?
- Is the Tenant entitled to a Monetary Order for a return of the security deposit?
- Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that tenancy started on July 31, 2018, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on December 31, 2022. Rent was established at an amount of \$1,674.75 per month and was due on the first day of each month. A security deposit of \$825.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

They also agreed that a move-in inspection report was completed on July 31, 2018, and that a move-out inspection report was conducted with the Tenant on December 31, 2022. A copy of these reports was submitted as documentary evidence for consideration. As well, the Tenant confirmed that she provided her forwarding address to the Landlords by email on January 13, 2023.

C.W. advised that the Landlords were seeking compensation in the amount of **\$836.69** for the cost to clean the rental unit as there was lots of dirt and unclean areas, there

was mould, and that the kitchen sink did not drain. She stated that the Tenant recognized these issues at the time of the move-out inspection. As well, she testified that the Tenant did not replace three burnt out lightbulbs at the end of the tenancy. She referred to the signed move-out inspection report that outlined the deficiencies in the condition of the rental unit, and she referenced the invoice submitted to support the Landlords' claims.

The Tenant advised that she spent \$300.00 to clean the rental unit, and stated that she was "not sure what happened" with the cleanliness at the end of the tenancy, but she acknowledged that she signed the move-out inspection report agreeing to the documented condition. As well, she testified that she purchased lightbulbs and provided them to the manager, who told her that he would use them.

C.W. advised that these lightbulbs that the Tenant purchased were not the same as the ones that required replacement, so they could not be used. As well, she stated that she informed the Tenant that she could hire a cleaner or clean the rental unit herself, but the Tenant stated that she would not be cleaning the property herself.

The Tenant agreed that "maybe" the cleaner she had hired did not clean as well as expected.

C.W. then advised that the Landlords were seeking compensation in the amount of **\$350.00** for the cost to repair damage to the drywall, and long marks on the countertop. She testified that there was damage to the floor due to water and that there were large marks on the drywall, including black marks in the bedroom. As well, she stated that the Tenant caused 10-15 centimeter marks on the kitchen countertop that could not be removed. She stated that the actual cost to repair all of this damage exceeded \$800.00. She referenced the inspection reports, the pictures provided, and the invoice to support the Landlords' claims of damage.

The Tenant refuted this damage, and stated that the area where there were marks on the wall was an area that she placed a chair.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making

this Decision are below.

Section 23 of the *Act* states that the Landlords and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlords and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlords must offer at least two opportunities for the Tenant to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulation* (the “*Regulation*”) outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlords or the Tenant have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlords to claim against a security deposit or pet damage deposit is extinguished if the Landlords do not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlords provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenant must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the inspection reports, as the consistent and undisputed evidence is that a move-in inspection report and a move-out inspection report was conducted with the Tenant, I am satisfied that the Landlords complied with the requirements of the *Act* in completing these reports. As such, I find that the Landlords have not extinguished the right to claim against the deposit.

Section 38 of the *Act* outlines how the Landlords must deal with the security deposit at the end of the tenancy. With respect to the Landlords’ claim against the Tenant’s security deposit, Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive the Tenant’s forwarding

address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposit. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposit, and the Landlords must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, given that the Landlords made their Application within 15 days of receiving the Tenant's forwarding address by email on January 13, 2023, and given that they did not extinguish their right to claim against the deposit, I am satisfied that the Landlords complied with the *Act*. As such, I do not find that the doubling provisions apply to the security deposit in this instance.

With respect to the Landlords' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenant fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlords prove the amount of or value of the damage or loss?
- Did the Landlords act reasonably to minimize that damage or loss?

I also find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Landlords' claims for compensation in the amount \$836.69 for the cost to clean the rental unit and replace burnt out lightbulbs, the consistent and undisputed evidence before me is that these deficiencies were noted on the move-out inspection report and that the Tenant agreed to the condition that the rental unit was left in. Furthermore, the Tenant acknowledged that the rental unit was not cleaned sufficiently. As such, I am satisfied that the Tenant did not clean the rental unit properly. With respect to the lightbulbs, there is no evidence before me that the Tenant provided the proper lightbulbs to replace the ones that were burnt out. When reviewing the totality of the evidence and testimony before me, I am that the Tenant did not leave the rental unit in a reasonable state. As such, I grant the Landlords a monetary award in the amount of **\$836.69** to remedy this matter.

Regarding the Landlords' claim for compensation in the amount of \$350.00 for the cost to repair damage to the drywall and long marks on the countertop, the consistent and undisputed evidence is that these deficiencies were marked on the move-out inspection report that was signed by the Tenant. As such, I am satisfied on a balance of probabilities that this damage was caused by the Tenant's negligence. Consequently, I grant the Landlords a monetary award in the amount of **\$350.00** to satisfy this debt.

As the Landlords were successful in their Application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for their Application.

As the Tenant was not successful in her Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for her Application.

Pursuant to Section 38, 67, and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Tenant to the Landlords**

Cleaning and repairs	\$836.69
Repairs to rental unit	\$350.00
Security deposit	-\$825.00
Filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$461.69</b>

Conclusion

The Landlords are provided with a Monetary Order in the amount of **\$461.69** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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 *Residential Tenancy Act*.

Dated: October 30, 2023

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Residential Tenancy Branch