



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      For the landlord: MNDL-S, FFL  
For the tenants: MNSDS-DR, 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 deposit (the deposit), 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 landlord to return the deposit, pursuant to section 38; and
- an authorization to recover the filing fee, pursuant to section 72.

Landlord MS and tenant DN attended the hearing. Tenant DN represented tenant HT. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

### Service of the Notice of Application and Evidence (the Proceeding Package)

The parties each confirmed receipt of the Proceeding Packages.

Based on the testimonies I find that each party was served with the Proceeding Packages in accordance with section 89 of the Act.

### Correction of the Landlord's name

The landlord's application lists applicant ES and respondents tenants DN and HT.

The tenant's application lists applicant DN and respondent landlord MS.

Both parties agreed the named landlord in the tenancy agreement is MS and the named tenants are DN and MS. MS affirmed the rental unit's owner is ES, but MS represented her during the tenancy agreement as the landlord.

Pursuant to section 64(3)(a) of the Act, I amended the landlord's application to list applicant landlord MS and the spelling of MS's name in the tenant's application.

Hereinafter, I will refer to landlord MS as the Landlord and tenant DN as the Tenant.

### Issues to be Decided

Is the Landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain the deposit?
3. an authorization to recover the filing fee?

Are the Tenants entitled to:

1. an order for the return of the deposit?
2. 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 parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the applicants' obligation to present the evidence to substantiate their application.

Both parties agreed the tenancy started on July 15, 2021 and ended on August 31, 2022. Monthly rent when the tenancy ended was \$2,550.00, due on the first day of the month. The Landlord collected and holds in trust the \$1,275.00 deposit.

The Tenant did not authorize the Landlord to retain the deposit.

The Tenant mailed the forwarding address to the Landlord in March 2023. The Landlord confirmed receipt of the forwarding address by March 31, 2023.

The Landlord submitted her application on April 8, 2023.

Both parties agreed the rental unit (the unit) is a 1 bedroom apartment, with approximately 650 square feet.

The Landlord is claiming \$190.00, as the Tenant damaged the wall. The Landlord stated the Tenant is responsible for wall damage behind the couch and underneath the breakfast counter. The Landlord submitted 3 photographs showing the wall damage and an invoice for the amount claimed. The Tenant testified the damages are wear and tear.

The Landlord is claiming \$116.55, as the Tenant did not return the mailbox key and the Landlord paid the amount claimed to replace the mailbox key. The Landlord submitted an invoice for the amount claimed. The Tenant said he did not return the mailbox key.

The Landlord is claiming \$100.00, as the Tenant damaged the unit's fob and the Landlord paid the amount claimed to replace it. The Landlord submitted an email from the strata indicating a new fob costs \$100.00. The Tenant affirmed that he dropped the fob and wrapped it with rubber band, but it still functioned when the tenancy ended. The Landlord stated that once she removed the rubber band the fob fell apart.

The Landlord is claiming \$150.00, as the Tenant did not clean the unit when the tenancy ended and the Landlord paid the amount claimed to a cleaner. The Landlord does not know the number of hours needed to clean the unit and testified that "it was not that dirty", but the Tenant abandoned some items in the unit.

The Tenant said the rental unit was in pristine condition and the only item abandoned was a 6-pound storage box. The Tenant submitted 5 photographs into evidence.

The Landlord is claiming \$700.00, as the Tenant damaged the unit's couch. The Landlord submitted the invoice for the couch purchased on April 28, 2019 for \$1,021.44 and is seeking the amount claimed because the couch was not new when the tenancy ended. The Landlord submitted 2 photographs that show the couch's bottom and leg damaged.

The Tenant affirmed the couch's leg broke when he was on the couch with his family and he did not mention this to the Landlord because he did not want to disturb her. The Tenant stated he immediately replaced the broken leg, he could continue to use the couch until the end of the tenancy and that similar used couches are sold for \$50 to \$150.00.

The Landlord is claiming \$103.50, as the Tenant damaged the unit's fan. The Landlord submitted a photograph and an estimate for the amount claimed. The Tenant testified that he accidentally damaged the fan and that a new one costs only \$45.00.

The Landlord submitted a monetary order worksheet.

### 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.

### Damaged walls

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."

Policy Guideline 1 states:

#### PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

[...]

Cleaning: The tenant is responsible for washing scuff marks, finger prints, etc. off the

walls unless the texture of the wall prohibited wiping.

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

I find the photographs submitted show clear examples of wear and tear, as the wall damage is hardly visible.

Tenants are not responsible for wear and tear damage.

Thus, I dismiss the claim for damaged walls, without leave to reapply.

#### Mailbox key replacement

Section 37(2)(b) of the Act states the tenant must return the keys “or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property”.

Based on the Landlord’s convincing and undisputed testimony and the invoice, I find the Landlord proved, on a balance of probabilities, that the Tenant breached section 37(2)(b) of the Act by not returning the mailbox key when the tenancy ended and the Landlord suffered the loss claimed.

As such, I award the Landlord \$116.55 in compensation for this loss.

#### Fob replacement

Based on the Landlord’s convincing and undisputed testimony and the email, I find the Landlord proved, on a balance of probabilities, that the Tenant breached section 37(2)(b) of the Act by not damaging the fob and repairing it with rubber band and the Landlord suffered the loss claimed.

I find it reasonable to award the amount requested as the fob did not have rubber band when the tenancy started and the Tenant damaged the fob by dropping it.

As such, I award the Landlord \$100.00 in compensation for this loss.

### Cleaning

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

Policy Guideline 1 states: The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

I accept the undisputed testimony that the Tenant abandoned a 6-pound storage box in the unit when the tenancy ended.

Based on the Tenant's photographs, I find the rental unit was reasonably clean when the tenancy ended, except for the box abandoned by the Tenant.

Removing all the Tenant's belongings is part of cleaning the unit. As the Tenant did not remove all his belongings, I find the Tenant breached section 37(2)(a) of the Act.

Based on the Landlord's testimony, I find the Landlord suffered a loss due to the Tenant's breach of section 37(2)(a) of the Act. However, I find the Landlord did not suffer the loss claimed, as the unit was mostly clean when the tenancy ended.

Based on the above, I find it reasonable to award the landlord \$30.00 for removing the Tenant's abandoned belongings.

I award the Landlord \$30.00 for cleaning expenses.

### Couch

Based on both parties' testimony and the photographs submitted into evidence, I find the damaged couch is regular wear and tear, as a couch leg can break anytime and a damaged leg can damage the couch's bottom. The Landlord did not produce evidence indicating the Tenant is responsible for the couch damages.

I dismiss the claim, without leave to reapply.

### Fan

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

The photograph submitted by the Landlord shows the fan's base broken in two parts. Unlike the couch's damages, this is not wear and tear, as it is not reasonable to expect that a fan's base will break in two parts. Furthermore, the Tenant admits he accidentally damaged the fan.

Based on the estimate submitted by the Landlord, I find that a similar fan costs the amount claimed. The Tenant did not submit a document indicating a cheaper price for a similar fan. Furthermore, the Tenant could have purchased the replacement fan.

As such, I award the Landlord \$103.50 in compensation for this loss.

### Summary

In summary, I award the Landlord:

<b>Item</b>	<b>Amount \$</b>
Mailbox key	116.55
Fob	100.00
Cleaning	30.00
Fan	103.50
Total:	350.05

### Deposit

I accept the Landlord's testimony that she received the forwarding address in writing on March 31, 2023. The Tenant does not know the date he mailed the forwarding address notice. Thus, I find the Landlord received the forwarding address notice on March 31, 2023.

Section 38(1) of the Act states the Landlord must submit an application for dispute resolution by the 15<sup>th</sup> day after the end of the tenancy and the date the landlord received the forwarding address in writing.

Considering the tenancy ended on August 31, 2022, the Landlord received the forwarding address on March 31, 2023 and submitted her application on April 8, 2023, I find the Landlord applied for an authorization to retain the deposit within the timeframe of section 38(1) of the Act.

As explained in section D.2 of Policy Guideline #17, 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.

Considering the above, I order the Landlord to retain \$350.05 from the deposit in total satisfaction of the monetary losses suffered and order the Landlord to return to the Tenants \$924.95 (\$1,275.00 minus \$350.05).

Filing fee

Each party must bear their own filing fee, as both parties were partially successful.

Conclusion

Pursuant to sections 7, 38, 67 and 72 of the Act, I authorize the Landlord to retain \$350.05 from the deposit in total satisfaction of the monetary losses suffered and order the Landlord to return to the Tenants \$924.95.

The Tenants are 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 31, 2023

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Residential Tenancy Branch