



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      FF, MND, MNDC, MNSD

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issues(s) to be Decided

This is a request for a monetary order for \$982.97, a request for the respondent to bear the \$50.00 cost of the filing fee paid for this hearing, and a request for an order allowing applicant to retain the security deposit plus interest towards this claim

### Background and Evidence

The applicant testified that:

- The tenant damaged the fridge door during the tenancy and as a result it had to be replaced at a cost of \$537.93.
- The refrigerator had a dent in the freezer door at the beginning of the tenancy but there was no damage to the fridge door, and the move-out inspection report for the previous tenant shows that there was no damage to the fridge door, when he moved out.

- The tenant left four large holes in the living room wall from the installation of a shelf and therefore the holes had to be filled and the wall repainted at a cost of \$135.00.
- The tenant also moved out of the rental unit before the end of the fixed term tenancy and as a result is liable for liquidated damages in the amount of \$300.00.

The respondent testified that:

- She has no idea how the fridge door got damaged, does not recall causing any damage to the fridge door, and it is her belief that the damage may have existed when she moved in.
- She did leave four holes in the living room wall from the installation of a shelf, however she believes the amount charged by the landlords to repair the holes to be excessive, and she would have repaired them herself had she known the landlord was going to charge such a large amount.
- She does not dispute the liquidated damages charge.

## Analysis

First of all I want to state that the landlord did not do the move in inspection and move-out inspections and reports in the manner required under the Residential Tenancy Act. Therefore pursuant to sections 24(2) and 36(2) of the Residential Tenancy Act 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.

Therefore although the landlords can still pursue a claim against the tenant for damages, the landlord cannot claim against the security deposit for those damages.

Therefore the section 38 portion of this application is dismissed without leave to reapply.

## Refrigerator

It is my decision that the applicant has not met the burden of proving that the damage to the fridge was caused by the respondent. It is my decision that the inspection report provided by the landlord is of little value because the tenant was not given the opportunity to participate in the inspection or to agree or disagree with the condition at the time that she moved in.

Therefore it is basically the landlord's word against that of the tenant. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

## Wall repairs

It is my decision that I will allow the claim for the wall repairs. The tenant admits to having put the holes in the wall to hang a shelf and therefore she is liable for the repair of those holes.

I do not agree that the amount claimed for repairing those holes and repainting the wall is excessive. The tenant may have been able to do the repair for less; however she agreed to allow the landlord to do it and did not put any monetary limitations on the landlord.

## Liquidated damages

The tenant does not dispute the claim for liquidated damages.



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## Conclusion

The applicants have established a claim of \$435.00. I further ordered that the respondent bear the \$ 50.00 cost of the filing fee paid for this hearing.

I therefore issued an order for the respondent to pay \$485.00 to the applicants.

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, 2009.

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Dispute Resolution Officer