



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      MND, MNSD

### Introduction

This hearing dealt with the landlord's application to keep all or part of the security deposit and for compensation for damage under the *Act*.

### Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary Order for compensation for damages under the *Act*; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenancy began on May 15, 2007 as a month to month tenancy for a current rent of \$1,210.00 per month due on the 1<sup>st</sup> of the month. A security deposit of \$550.00 was paid on May 15, 2007.

No tenancy agreement was signed by the parties and no condition inspection report was completed either at move in or moved out. The landlord and tenant confirmed that a move out inspection was attempted but the tenant got upset and left.

The landlord submitted into evidence the following documents:

- A summary of issues relating to the end of the tenancy and condition of the rental unit;
- An invoice for repairing the kitchen sink, filling picture holes in the walls, painting the walls and baseboards, repairing a gate, and repairing holes in the kitchen floor in the amount of \$720.30;
- Various receipts from two hardware stores and a paint store dating from August 14, 2009 to August 28, 2009 for paint and supplies totalling \$186.37;
- An invoice for repairs to a washing machine dated February 19, 2009;
- 3 photographs; and
- A further summary of issues relating to the entire tenancy and the condition of the rental unit at the end of the tenancy.

The tenant submitted the following documents for evidence:

- A summary of events at the end of the tenancy;
- 23 photographs showing the condition of the rental unit at the end of the tenancy;
- A letter from a personal organizer who helped the tenant with her move out;
- Additional summary of issues relating to the entire tenancy; and
- An email from the tenant to the landlord requesting her security deposit back dated August 19, 2009.

The landlord testified that there were a substantial number of holes in the walls for pictures as well as dents and scuffs on the walls that required repair and then subsequently required painting. The invoice submitted counts the number of holes, gashes, dents and rips at 123 in the 2 bedroom plus den rental unit.

The landlord testified that no specific direction on picture hanging was provided to the tenant at the start of the tenancy except that she could hang pictures to make the rental unit comfortable and her home. The tenant agreed that there were many pictures where she had made 2 or 3 holes for one picture as she had trouble setting it in the right spot.

The landlord further testified the window sills were left very dirty and that the kitchen required major scrubbing under the fridge as well as on the top and underneath of the kitchen cabinetry. The landlord noted in her documentary evidence chips in the enamel on the stove and washing machine; chips in the ceramic floor tile.

The landlord stated that she had to clean the side and top of the stove, the range hood, behind the fridge, the front door, all the venetian blinds, all windows, and there were major scratches in the sinks. The landlord goes on to say she cleaned all the cupboards including a drawer in the bathroom that required painting because of spilled makeup and the washer and dryer and underneath.

The landlord's witness confirmed a large volume of holes in the walls but was unable to recall the cleanliness of the rental unit at the time the tenancy ended. He did confirm that some of the dents may have been caused as part of the move out.

The tenant testified that she had offered to repair the holes prior to leaving but the landlord indicated she wanted it professionally done; the landlord did not dispute this. The tenant claimed that although the rental unit was brand new when she moved in the holes in the ceramic floor tiles were there at the start of the tenancy.

In relation to the landlord's claim regarding the cleaning of windows, the tenant indicated that it was hard to clean the inside windows because the outside ones had not been cleaned in such a long time. The tenant's witness was not able to participate in the hearing, despite attempts made to call her into the hearing.

## Analysis

The *Act* requires a Condition Inspection Report be completed when a tenancy begins (Section 23) and when a tenancy ends (Section 35). Failure to complete either one of the Condition Inspection Reports extinguishes the parties' ability to claim against the security deposit for damages, however, this does not mean the landlord cannot claim for damages or loss under the *Act*.

In order to establish if a party is entitled to compensation for damage or loss the burden is on the applicant to show how their claim meets the following four part test:

1. That a loss or damage exists;
2. The loss or damage results from a violation of the *Act*;
3. The value of the damage or loss; and
4. The party has taken all reasonable steps to mitigate the damage or loss.

The Residential Tenancy Policy Guidelines state a landlord may set rules as to how pictures are to be hung and that if a tenant follows those instructions the tenant is not responsible for any damage. In this case the landlord did provide any rules.

The Guidelines go on to say that a tenant must pay for repairing the walls where there are an excessive number of nail holes. The question then becomes what is an excessive number of nail holes for a rental unit of this size. While the tenant admits she may have had several holes for each picture the number of holes may be considered excessive. However, in this case, the tenant offered to repair the holes prior to vacating the rental unit, the landlord declined thus failing to mitigate any loss.

The Policy Guidelines also state that the landlord is responsible for painting the interior of the rental unit at reasonable intervals. While the guidelines state the useful life of interior painting is 4 years, it is reasonable for a landlord to paint a rental unit when a tenancy is ending after two years. I find in this instance that no loss or damage exists.

Section 37 of the *Act* states a tenant must leave a rental unit in "reasonably clean, and undamaged except for reasonable wear and tear". Based on the photographic evidence and in absence of any other confirmation I find the tenant left the rental unit reasonably clean, with the following exception: the windows. The tenant confirmed in her testimony that they could have been cleaned better. I therefore find the landlord has suffered a loss in violation of the *Act*.

In the absence of a Condition Inspection Report from the start of the tenancy and in light of the tenant's testimony that the cracks in the ceramic kitchen floor were there prior to the start of the tenancy, I find it cannot be established if the tenant caused this damage.

The Policy Guidelines speak also specifically to fixtures such as fences where it states that the landlord is responsible for maintaining fences or other fixtures erected by the

landlord. There was no evidence supporting the cause of the required maintenance on the fence other than reasonable wear and tear.

Based on the above, I find the landlord is entitled to compensation for cleaning the windows of the rental unit. In terms of determining the value the landlord had claimed \$75.00 for all of the cleaning I find it reasonable to assess the value to clean the windows adequately at \$40.00.

### Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of \$40.00. As the landlord was only partially successful in her application I dismiss her application for recovery of the filing fee.

I further find the tenant is entitled to the return of the security deposit and interest held. Pursuant to Section 72 (2) (b) I order the landlord may deduct the \$40.00 compensation from the security deposit and interest held in the amount of \$563.55 in satisfaction of this claim. I grant a monetary order to the tenant in the amount of **\$523.55**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) 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: December 02, 2009.

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Dispute Resolution Officer