



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with cross applications. The landlord applied for a Monetary Order for damage to the rental unit and authority to retain part of the security deposit. The tenant applied for a Monetary Order to recover an improper rent increase. Both parties requested recovery of the filing fee paid for their respective applications. Both parties appeared at the hearing and confirmed service of documents. Both parties were provided the opportunity to be heard and to respond to submissions of the other party.

### Issues(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit, and if so, the amount?
2. Has the tenant established an entitlement to recover a rent increase paid to the landlord?

### Background and Evidence

The parties provided the following undisputed evidence. The tenancy commenced July 1, 2004 and ended April 30, 2010. The tenant was required to pay rent of \$1,000.00 per month in accordance with the tenancy agreement. Starting January 1, 2010 the landlord increased the rent to \$1,075.00 per month by way of a letter to the tenant. The landlord did not prepare move-in or move-out inspection reports.

In making the tenant's application the tenant is seeking to recover the \$75.00 rent increase paid over four months of January through April 2010 for a total of \$300.00. The landlord submitted that rent had not been increased for several years and requested that the landlord permitted to retain at least the legal rent increase for the year.

In making the landlord's application the landlord is claiming the following damages:

Repaint bedroom and replace broken blind	\$ 163.25
Remove satellite wires, ladder rental	14.56
Wood pallet removal	110.88
Labour for painting and wire removal	<u>50.00</u>
Total	\$ 338.69

The landlord testified the bedroom was painted blue by the tenant and had to be returned to a white colour. The landlord submitted that the tenant had agreed that the tenant was responsible for repainting the walls white per email communication between the parties. Upon enquiry, the landlord stated that the last time the bedroom was painted white was before the tenancy commenced.

The landlord testified that the bedroom window blind broke during the tenancy. Upon enquiry, the landlord stated the blind was approximately 7 or 8 years old and the landlord was uncertain as to whether it was vinyl or aluminum.

The landlord submitted that the tenant installed a satellite dish at the property and was responsible for removing the wires. The landlord stated that the satellite wires still hang from the house and will require the landlord to rent a ladder and take time to remove the wires.

Upon enquiry the landlord confirmed that the wood pallet has been removed from the property at no cost to the landlord.

The tenant responded to the landlord's claims as follows. The tenancy agreement did not prohibit the tenant from painting the walls and the tenant had been living in the rental unit for many years. The tenant had agreed with the landlord that the walls must be returned to white before becoming informed of the landlord's requirement to repaint at regular intervals. The window blind was plastic and broke from normal use over several years. The tenant acknowledged that the satellite wires need to be removed and was agreeable to compensating the landlord for the ladder rental and a couple of hours of time.

Provided as documentary evidence by the tenant was a copy of the tenancy agreement, and copies of cheques and bank statements of the tenant's bank account for the months of January through April 2010. Provided as documentary evidence by the landlord were quotes for paint, blinds, ladder rental and junk removal and photographs of the rental unit.

### Analysis

Upon consideration of all of the evidence before me I make the following findings.

### **Tenant's application**

Part 3 of the Act provides for rent increases. All rent increases must be given on the approved form at least three months before the increase is to take effect and for an amount that complies with the Act and Regulations. Section 45(3) of the Act provides that where a landlord collects a rent increase that does not comply with Part 3 the tenant may recover the increase.

Having heard the landlord served a letter to increase the rent rather than serve the approved form I find the rent increase paid by the tenant is recoverable by the tenant. The landlord is not entitled to retain any portion of the rent increase as the approved form was not served upon the tenant. Nor was I provided evidence that the tenant was provided at least three months of notice as required by the Act.

The tenant provided sufficient evidence to show that he paid a rent increase that does not comply with the Act in the amount of \$75.00 per month for four months. Therefore, I grant the tenant's request to recover \$300.00 from the landlord.

### **Landlord's application**

Upon review of the tenancy agreement I find no specific terms with respect to painting or decorating the rental unit. In the absence of a specific term concerning painting then by default the standards imposed by the Act will apply. The Act requires that a tenant leave a rental unit undamaged. Therefore, one of the issues for me to determine is whether the tenant left the rental unit damaged by painting the bedroom walls blue.

I note that in one of the email communications written by the tenant the tenant refers to a verbal agreement to keep the paint white. This would suggest that wall colour other than white would be unacceptable and considered damage.

Under the Act where a tenant causes damage the landlord is entitled to recover their loss for the damages. Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 37.

As the parties were informed during the hearing, interior paint has a useful life of four years. Accordingly, the landlord would have been in a position to repaint the unit at the end of the tenancy due to normal aging and wear and tear. Accordingly, I find the landlord's claim for the full cost of the paint supplies to be excessive given the fact that the walls were last painted six years ago. Therefore, I have considered whether the landlord incurred additional painting costs because the walls were blue.

The landlord's quote shows two cans of paint were required. In one of the landlord's email communications the landlord refers to information from the paint store that two gallons would be required to cover the blue paint. Since one can would be required for painting the walls if the walls were still white I find the tenant obligated to pay for one of the cans of paint. The landlord is awarded the cost of one can of paint and three hours of labour at \$20 per hour. The landlord's award for painting is  $\$44.23 + \$60.00 = \$104.23$ .

Upon hearing the tenant state the blinds were plastic and upon my review of the photographs I accept that the broken blinds were a plastic or vinyl material. Having heard the blinds were several years old I find that they were at the end of their useful life and the depreciated value to be nil. Therefore, the landlord's request for compensation for the blinds is dismissed.

As the wood pallet has been removed at no cost to the landlord I make no award to the landlord for this item.

I find the tenant responsible for paying for the removal of the satellite wires. The landlord has satisfied me that a ladder rental will cost \$14.56 and that the landlord will have to spend a couple of hours to rent the ladder and remove the wires. I award the landlord \$54.56 including labour.

### **Monetary Order**

The landlord has retained possession of the security deposit and the accrued interest of \$517.71 yet the landlord extinguished the right to claim against the security deposit due to failure to prepare inspection reports. Accordingly, the tenant is entitled to return of the security deposit and interest.

The tenant was successful in his application and the landlord was partially successful in his application. I award the tenant \$25.00 towards the \$50.00 filing fee paid by each party. In light of all of the above findings, I provide the tenant with a net Monetary Order as follows.

Security deposit and interest	\$ 517.71
Rent overpayment	300.00
Less: damages awarded to landlord (104.23 + 54.56)	(158.79)
Plus: one half of filing fee	<u>25.00</u>
Monetary Order for tenant	\$ 683.92

The tenant is provided a Monetary Order to serve upon the landlord. The Monetary Order may be enforced by filing it in Provincial Court (Small Claims) to enforce as an Order of that court.

### **Conclusion**

The tenant has been provided a Monetary Order in the net amount of \$683.92 to serve upon the landlord.

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: September 30, 2010.

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Dispute Resolution Officer