



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, & FF

### Introduction

This hearing dealt with an application by the landlords seeking a monetary claim against the tenants due to loss suffered as a result of a breach of the tenancy agreement and *Act*. The landlord also seeks to retain the tenant's security deposit in partial satisfaction of this claim.

The landlord provided affirmed oral evidence that the tenant was served with notice of this application and hearing by registered mail on September 16, 2010. Review of the tracking number from Canada Post provide by the landlord confirms that the registered package was delivered to the tenant.

Based on the evidence provided by the landlord, I am satisfied that the tenant was served with notice of this proceeding by registered mail and I deem that the tenant received notice on the fifth day after the registered mail was sent pursuant to section 90(a) of the *Act*.

### Issue(s) to be Decided

Has the tenant breached the tenancy agreement, *Act* or regulations entitling the landlord to a monetary claim for damage or loss?

Is the landlord entitled to retain the tenant's security deposit?

### Background and Evidence

This tenancy began on September 1, 2009 and ended at the end of the fixed term on August 31, 2010. The monthly rent was \$1,200.00 due on the 1<sup>st</sup> of each month and the tenant paid a security and pet deposit of \$1,200.00 on September 1, 2009.

The landlord seeks a monetary claim of \$1,553.69 resulting from the tenant's failure to return the rental unit in a clean and undamaged condition and due to the tenant's breach of strata bylaws:

Breach of strata bylaw – noise complaint	\$200.00
Breach of strata bylaw – damage to common property	\$250.00
Damage to front door	\$200.00
Cost to clean the rental unit	\$175.00
Cost to have carpets cleaned	\$236.38
Replacement of kitchen faucet	\$148.00
Recovery of filing fee paid for this application	\$50.00
<b>TOTAL</b>	<b>\$1,459.38</b>

For evidence the landlord provided a copy of the written tenancy agreement and a letter dated September 8, 2010 from the strata identifying that the tenant caused damage to the garage door, caused a noise disturbance on August 24, 2010 and finally that the tenant stored boxes and debris on the common property of the strata. The landlord also provided copies of the receipts for the repairs and cleaning completed to the property and photographs of the condition of the rental unit, the damaged faucet and front door to the rental unit and of the items and debris in the common area on the strata property.

The landlord did not complete a move in or move out condition inspection with the tenant in writing. The landlord confirmed that the tenant provided him with her forwarding address in writing; however, the landlord could not confirm the date that the forwarding address was provided. The landlord testified that the tenant signed the form K which declares that the tenant will abide by the strata bylaws but the landlord did not provide a copy of this as part of the evidence for this hearing.

## Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard. To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

First proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures of a rental unit a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

In the absence of any evidence to the contrary, I accept the oral testimony of the landlord and the photographic evidence of the rental unit as demonstrating the condition of the rental unit at the end of the tenancy. Based on this evidence I accept that the landlord was required to clean the rental unit and to clean the carpets of the rental unit. I also accept that the front door of the rental unit was damaged.

With respect to the kitchen faucet, I am not satisfied that this fixture was damaged by the tenant. The landlord provided no evidence to demonstrate that the faucet was damaged by some negligent act of the tenant or whether the faucet failed due to normal wear and tear. I deny this portion of the landlord's claim.

With respect to the fines the landlord received from the strata, I accept the oral testimony of the landlord that the tenant accepted the strata bylaws as terms of her tenancy agreement. I accept that the strata fined the landlord for a noise violation and due to the tenants leaving their possessions in a strata common area. I do not accept that the tenant is responsible for the alleged damage to the strata common property because no evidence was provided by the landlord to substantiate this allegation.

I find that the landlord has established a total monetary claim for the sum of **\$1,061.38** including recovery of the \$50.00 filing fee paid for this application. I order pursuant to section 38(4) of the *Act* that the landlord may deduct this sum from the tenant's security and pet deposit of \$1,200.00. The remaining balance of \$138.62 must be returned to the tenant in accordance with section 38 of the *Act*.

Conclusion



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The landlord's application has been granted in part and I have order that the landlord may retain the sum of **\$1,061.38** from the tenant's security and pet deposit of \$1,200.00 in satisfaction of this claim.

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: January 05, 2011.

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Residential Tenancy Branch