



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The Landlord applied for a monetary order for damage to the rental unit, an order to retain all or part of the security deposit, and to recover the filing fee for the Application.

The Tenants applied for a monetary order to recover all or part of the security deposit and to recover the filing fee for the Application.

The Tenants and the Landlord's Agent appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Are the Tenants entitled to a Monetary Order under sections 38 and 72 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order under sections 67 and 72 of the *Residential Tenancy Act*?

### Background and Evidence

I heard undisputed testimony that this tenancy began on March 1, 2008, and ended on June 29, 2010. Rent was \$1,277.00 per month and a security deposit of \$567.50 was paid on February 8, 2008. I heard undisputed testimony that the Tenants provided the Landlord a forwarding address on July 14, 2010 and the date of the Landlord's Application was July 28, 2010.

## The Landlord's Claim and Evidence

The Landlord's relevant evidence included 2 pages of a tenancy agreement, a move in condition inspection report and a move out inspection report, a statement and invoice from a painting company and photos of interior walls.

In his testimony, the Landlord's Agent explained he did a walk through inspection with the male Tenant at the end of the tenancy, but that the Tenant refused to sign the report. The Landlord's Agent testified that he was not claiming for all interior walls, just the ones needing a second coat, which were in the living room, second bedroom, and hallway.

In the Landlord's claim for damage to the listed interior walls of the rental unit, the Landlord's Agent testified that the Tenants damaged the walls to such an extent that these walls needed a second coat of paint. The Landlord's evidence in the form of photographs depicts the allegations that the damages were caused by the Tenants.

The Landlord's Agent testified that, pursuant to the tenancy agreement, the Tenants were not allowed to use nails on the walls in the rental unit, but upon query, the Agent confirmed that this portion of the tenancy agreement was not submitted into evidence.

The Landlord's Agent, upon query, acknowledged that his representative conducted the move in inspection, listing the walls of the living room in "Fair" condition, the second bedroom's wall as having "Normal Wear and Tear," and no marks indicating the condition of the hallway walls. The Landlord's Agent testified that he agreed with his representative's condition inspection report.

Upon query, the Landlord's Agent stated that the rental unit was not painted prior to the Tenants moving in, had not been painted for 3 years, 2 months and was due to be painted after the Tenants' departure; however, the Agent testified that the re-painting of a rental unit should require only one coat.

## The Tenants' Claim and Evidence

The Tenants' evidence was not timely submitted and was not considered.

In support of the Tenants' claim for a return of their security deposit, the male Tenant testified that he did not refuse to sign the move out inspection, but since he disagreed with the assessment of the Landlord's claim of wall damage, did not believe he should sign it. The male Tenant denied damaging the walls and further testified that the walls were not in good condition when the Tenants moved in, as depicted by the move in

inspection report and that any marks left were as a result of normal wear and tear, considering the length of the tenancy and the fact the Tenants had a young child.

## 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 claiming party has 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. In this case, the onus is on the Landlord to prove damage or loss.

I accept that the photographs submitted by the Landlord were taken in the rental unit a day after this tenancy ended. However, I am not convinced that the Tenants committed any damage to the walls. The move in condition inspection report indicated that the second bedroom's walls had wear and tear prior to the tenancy, that the living room walls were listed in only fair condition and there was no indication of the state of the hallway walls. Therefore I am unable to determine the exact state of the walls prior to the tenancy, which showed wear and tear, and any wear and tear allowed by the Tenants under the Act. Additionally I am unable to determine from the invoice submitted by the Landlord as to which walls needed a 2<sup>nd</sup> coat of paint, as the document leads me to believe a 2<sup>nd</sup> coat was applied throughout the rental unit, not just for the walls claimed by the Landlord's Agent.

Under the policy guideline, tenants are allowed to put up pictures in their rental unit, although the landlord may set rules as to how this can be done. I find that the Landlord failed to submit evidence that these rules were conveyed to the Tenants and that the Tenants are not responsible for filling the holes or the cost of filling the holes.

I therefore find that the Landlord submitted insufficient evidence to prove step 2 in the test for damage and loss and I therefore **dismiss** the entire claim of the Landlord.

**In regard to the Tenants' claims for a return of their security deposit, I allow their Application and grant a monetary order against the Landlord.**



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The security deposit is held in trust for the Tenants by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the Act. Here the Landlord did not have authority under the Act to keep any portion of the security deposit.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the security deposit, plus interest.

I find that the Landlord is not entitled to retain any portion of the security deposit or interest and must return the security deposit, plus the interest to the Tenants, pursuant to section 38 of the Act.

I find the Tenants were successful in their Application and I award the filing fee to be reimbursed to them.

I find that the Tenants have established a total monetary claim of **\$625.13** comprised of \$567.50 for the security deposit, plus interest of \$7.63, and the \$50.00 fee paid for this application.

I **grant** the Tenants an order under section 67 for the amount due of \$625.13. The Tenants are given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

## Conclusion

The Landlord's claim is dismissed as there was insufficient evidence regarding the alleged damages caused by the Tenants.

The Tenants' claim is allowed and they are awarded **\$625.13**, payable by 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: January 05, 2011.

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Residential Tenancy Branch