



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

**Dispute Codes** MND, MNSD, MNDC, FF

### **Introduction**

This hearing was convened by way of conference call to deal with the landlords' application for a monetary order for damage to the unit, site or property; for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords to retain the security deposit in partial satisfaction of the claim; and to recover the filing fee from the tenants for the cost of this application.

The male landlord and both tenants attended the conference call hearing. All parties gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. The landlords and the tenants also provided evidence in advance of the hearing. All information and evidence provided has been reviewed and is considered in this Decision.

### **Issue(s) to be Decided**

Are the landlords entitled to a monetary order for damage to the unit, site or property?  
Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?  
Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

### **Background and Evidence**

This tenancy began as a fixed term tenancy on February 21, 2009 and expired on February 28, 2010. The tenancy then reverted to a month-to-month tenancy, and the landlord gave written notice to the tenants to vacate on June 30, 2010 because the landlord wanted to move back in. The tenancy ended on August 31, 2010, although the tenants moved on or about August 28, 2010.

Rent in the amount of \$1,500.00 per month was payable in advance on the first day of each month and there are no rental arrears. At the outset of the tenancy, the landlords collected a security deposit from the tenants in the amount of \$750.00.

The landlord testified that the tenants left large scratches on the kitchen laminate flooring, and had mounted shelving in the garage and on the main floor of the rental unit, as well as a large glass board. The items were mounted to the walls with 6 or 8 large anchors. Further, he testified that the ceiling in the kitchen was partially repainted with an off color than the rest of the ceiling. It appeared that there had been water damage from the bathroom above, as evidenced from bubbling, and then a patch repainted with paint left in the unit, but it didn't match the rest of the ceiling. He did not notice it for some time after the tenants had vacated the rental unit. The landlord further testified that tiles at the back entrance and the outside are discoloured from cat urine and smells like cat urine. He testified that he lived there for about 4 years prior, but the house was entirely repainted about one year before the tenants moved in. He provided an estimate for ceiling repair, stained tile maintenance and to replace the molded door casing for \$1,288.00 and claims that amount from the tenants. The landlord still holds the security deposit in trust.

The tenants testified that no move-in condition inspection report was completed, and the landlord was supposed to meet the tenants at the rental unit on August 28, 2010, but he sent his parents instead. Consequently, no move-out condition inspection was completed, and the parents collected the keys and a forwarding address for the tenants.

The tenants also testified that the parties spoke about the glass board and the shelving prior to vacating, and the tenant told the landlord to let them know if he wanted the shelving and the glass board removed. Further, the landlord attended the unit on August 23, 2010 to take measurements but did not mention any damage or problems with the unit at that time.

On September 2, 2010 the landlord sent a text message to the tenant stating that he wanted the tenant to remove the shelving and the board. The next day the tenant replied to that text saying the landlord was supposed to be there on August 28, 2010 but sent his parents instead, and requested that his security deposit be returned.

## **Analysis**

In order to be successful in a claim for damages, the onus is on the claiming party to prove a 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the opposing party's failure to comply with the *Act*, regulation or tenancy agreement;
3. The amount of the damage or loss;
4. What efforts the claiming party made to mitigate the loss or damage.

In regards to meeting element two of the test for damages, the landlord's position was that this damage was clearly committed by the tenants during the course of this tenancy. With respect to the tiles, ceiling, molding and the scratches on the laminate floor, I find that this can only be established with clear verification of the condition of the unit at the time the tenancy began as compared to the condition of the unit after the tenancy had ended.

Under the *Act*, a condition inspection report requires input from the two parties who have entered into the tenancy agreement. Section 23(1) of the *Act* requires that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

Section 23(3) and section 35 both state that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. The *Act* places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and states that both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations. Part 3 of the Regulations goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspections and Reports must be conducted.

In this instance, after the tenancy had ended, the landlord determined that damage had occurred on the ceiling, molding, tiles and laminate floor during the tenancy. He also contacted the tenant and asked him to remove the shelving and the glass board after the tenancy had ended. However, I find the practice followed by this landlord to be seriously flawed in that it does not comply with the *Act* or the regulations. An inspection must be done contemporaneously with the vacating of the unit as required by the *Act*.

I find that the landlord has failed to prove that the scratches on the laminate, the painted ceiling, damaged molding and the discoloured tiles were caused by the tenants. With respect to the shelving and the glass board, I accept the evidence of the tenants that they asked the landlord prior to vacating if he wanted them removed, but he declined that offer at the time. The only evidence before me with respect to cost deals only with the ceiling repair, stained tile maintenance and molded door casing. I find that the landlord has failed to provide proof of the cost incurred for removing the shelving and the glass board.



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## **Conclusion**

For the reasons set out above, the landlord's application is hereby dismissed without leave to reapply.

I further order that the landlord comply with Section 38 of the *Residential Tenancy Act* with respect to the deposit currently held in trust on behalf of the tenants.

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 04, 2011.

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Residential Tenancy Branch