



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order to retain the security deposit and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on approximately November 6, 2010. The Tenant testified and confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order to retain the security deposit as a result of that breach?

### Background and Evidence

I heard disputed testimony pertaining to whether the tenancy agreement was verbal or in writing. The Landlord testified it was verbal while the Tenant testified it was in writing.

I heard undisputed testimony that the month to month tenancy was effective June 1, 2007 and ended when the Tenant vacated the property on October 31, 2010. Rent was payable on the first of each month in the amount of \$700.00 and on or before June 1, 2007 the Tenant paid \$350.00 as the security deposit. A move in inspection report was completed June 1, 2007 and a move-out report was completed November 2, 2010 to which the Tenant signed that she did not agree to the report. The Tenant provided her forwarding address in writing on November 2, 2010.

The Landlord testified he wants to keep the security deposit of \$350.00 as compensation for damage caused to the hardwood floor in the bedroom which is listed as the master bedroom on the move-in and move-out inspection report forms, to cover the cost to replace the ceiling fan, and to pay for the cleaning of the rental unit.

The hardwood floors were in good condition at the onset of the tenancy as noted on the move-in inspection report form; however they were damaged at the end of the tenancy as supported by the Landlord's photographic evidence. It cost him \$500.00 to have the floors refinished, as supported by the invoice he provided in evidence. The work was completed December 15, 2010. He confirmed this invoice covers the cost of refinishing the floor in both upstairs bedrooms.

The second item he wishes to claim is the two ceiling fan blades which the Tenant broke and did not repair. He was not able to find replacement blades at the hardware store he went to so he purchased a new ceiling fan at a cost of \$79.00 plus HST as supported by the invoice in his evidence. He did not shop around to see if he could purchase replacement blades. He had to pay an electrician \$72.80 to install this fan. The fan was in the house when he purchased it in 2003 so he cannot say how old this fan / light combination unit was. He purchased the new fan November 1, 2010 and attempted to install it himself but could not. So the electrician installed it on February 25, 2011.

After a brief discussion the Landlord requested to amend his application to request to retain the security deposit of \$350.00 to compensate for refinishing the floor and to pay to purchase and install the new light / fan.

The Tenant testified and confirmed she broke a blade on the fan when she was shaking out a blanket or towel. She argued lighting stores do sell replacement fan blades and does not feel she should have to pay to replace the entire unit.

She stated the damaged floor was in her son's room, the room he occupied upstairs. The floors were very old and were not sealed so they finish would rub off very easily.

The finish would rub off if she walked on the floors with socks. She confirms the damage was caused by her son's chair when he would move away from his computer desk. His chair was an office type chair with wheels on the bottom. She admitted that her son was hard on the floor. She states that after her tenancy ended the Landlord had all of the hardwood floors refinished and not just the bedroom.

The Landlord confirmed he had the living room floor refinished but that he received a separate invoice for the living room.

### Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

In this case the evidence supports there was damage caused to the hardwood floor by the Tenant's son and the fan blade was broken by the Tenant. After careful review of the Landlord's evidence I find there to be sufficient evidence to support the Landlord suffered a loss greater than the security deposit; even if the Landlord would have replaced the broken fan blade(s). Therefore, I approve the Landlord's claim of \$350.00.

The Landlord has been successful with his application; therefore I award recovery of the \$50.00 filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit as follows:

Claim for damages to the rental unit	\$350.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	<b>\$400.00</b>
Less Security Deposit of \$350.00 plus interest of \$8.38	- 358.38
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$41.62</b>

### Conclusion

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$41.62**. The Order must be served on the respondent and is enforceable through the Provincial Court 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: March 15, 2011.

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Residential Tenancy Branch