



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking to keep all or part of the security deposit due to alleged damages by the Tenant to the rental unit and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to cross-examine the other party, and make submissions to me.

Only the evidence timely submitted and relevant to the issues and findings in this matter are described in this Decision.

### Issues(s) to be Decided

Is the Landlord entitled to a monetary order for alleged damages and to recover the filing fee?

### Background and Evidence

This month to month tenancy began on April 15, 2010, ended on February 28, 2011, monthly rent was \$850.00 and the Tenant paid a security deposit of \$425.00 on March 22, 2010.

Despite the Landlord testifying that she submitted a copy of the tenancy agreement, the only documentary submissions of the Landlord were copies of photos allegedly of the rental unit after the Tenant vacated, an invoice from the Landlord's boyfriend for restoring of the rental unit, in the amount of \$189.00, and a copy of a cheque for \$244.50, made payable to the Tenant, for a return of a portion of the Tenant's security deposit. The Landlord explained that this cheque had not been given to the Tenant.

The Landlord stated that the Tenant agreed to restore the rental unit back to its original colour after the Tenant vacated, as per the term in the tenancy agreement, which had been provided by the Tenant. Upon query, the Landlord could not point me to that term.

The Landlord admitted that the subsequent tenants had taken possession of the rental unit after the Tenant vacated, prior to the pictures of the rental unit being taken.

The Landlord acknowledged that there was no written move in or move out condition inspection report, but submitted that the rental unit was newly renovated and that it would be “obvious” that the children’s room had been painted by the Tenant and not restored.

The Landlord admitted that she had not returned any portion of the Tenant’s security deposit or had received written or verbal authority to retain the security deposit.

In response the Tenant submitted written testimony, the one page handwritten tenancy agreement, the security deposit receipt, and a notice to end tenancy, dated January 31, 2011, and containing the Tenant’s forwarding address.

The Tenant submitted that the Landlord had allowed them to paint the rental unit, as the rental unit was partially renovated. The Tenant stated that she paid for the paint and work to paint the rental unit and that the Landlord was pleased with the work.

The Tenant submitted that the Landlord had admitted that all the prospective new tenants liked the painting and did not want to change it. The Tenant submitted that the Landlord had secured new tenants prior to them moving out and that the painting was not an issue.

The Tenant denied damaging the rental unit.

### Analysis

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

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations, the Landlord in this case, has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 23(3) of the Residential Tenancy Act (the “*Act*”) requires a landlord to offer a tenant at least 2 opportunities to complete a condition inspection at the start of the tenancy. Section 24(2) of the *Act* extinguishes the right of the landlord to claim against the deposit for damages should the landlord fail to offer the opportunities for inspection.

Section 35 of the *Act*, among other things, requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to complete a move-out condition inspection. A failure to provide the opportunities for inspection at the end of the tenancy results in the application of section 36(2); which extinguishes the right of a landlord to claim against the deposit for damages when the tenant was not provided the opportunities for inspection at the end of the tenancy.

The obligation of the Landlord is to provide opportunities for a move in and move out condition inspection. In the absence of a condition inspection report, I find the Landlord has not established the condition of the rental unit either before or after this tenancy and therefore I find that the Landlord has **not** proven a monetary claim for the alleged damages to the rental unit.

I **dismiss** the Landlord's Application **without leave to reapply**.

As the Landlord's application is dismissed, I do not find she is entitled to recovery of the filing fee.

Under authority of Section 67 of the Act, I **direct** the Landlord return the Tenant's security deposit in the amount of \$425.00 forthwith and therefore I grant the Tenant a monetary **Order** in the amount of **\$425.00**.

#### Conclusion

The Landlord's application is dismissed without leave to reapply.

The Tenant is granted a monetary order in the amount of \$425.00.

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: June 23, 2011.

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Residential Tenancy Branch