



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This matter dealt with an application by the landlord for a Monetary Order for damages to the rental unit. The landlord also seeks an Order to keep the tenants security deposit and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the tenants on May 15, 2011. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords, one tenant and a witness for the tenants appeared. The Parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witness, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damages to the unit?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

Both parties agree that this month to month tenancy started on February 01, 2009 and ended on February 28, 2011. Rent for this unit was \$1,346.00 and was due on the first of each month. The tenant attending paid a security deposit of \$674.00 on March 30, 2008 when he originally moved into the unit. The tenants gave the landlord their forwarding address in writing on March 01, 2011.

The tenant attending testifies that he originally lived in the unit with his sister and agrees a move in condition inspection report was completed at that time. He states when his sister moved out he and his brother entered into a new tenancy agreement with the landlord.

The landlord testifies that when the tenants moved out they did not agree to arrange a time with the landlord to do the move out condition inspection. The landlord testifies that they left lots of telephone messages and e-mails requesting a meeting to do the inspection together but the tenants did not return the landlords calls or attend on any of the days requested by the landlord.

The landlord testifies that they then conducted the move out inspection with an independent person who was the person who would make any repairs to the unit if they were required. This person also took photographs of the unit which have been provided in evidence.

The landlord's testify that the tenants did not clean the carpets at the end of the tenancy and the landlords had these cleaned at a cost of \$220.00. The landlord also states the tenants did not clean the unit to a satisfactory standard and they paid to have it cleaned at a cost of \$200.00.

The landlord's testify that the front door was left with a crack in the centre of the door and side and the beading on the door had been removed. The landlords state that the tenants sent them an e-mail in which they said they would make these repairs to the door but the still failed to do so. The landlords testify that they had to replace the front door at a cost of \$350.00.

The landlord testifies the tenants left behind a table and printer which were worth virtually nothing. They state they paid \$50.00 to their contractor to have these items removed and disposed off. They claim the tenant's also left other personal items which the landlords disposed of but they are not filing a claim for these items.

The landlords claim the tenants caused damage to the bathroom cabinets and two knobs from the cabinet were missing. The landlord seeks to recover \$20.00 for replacement knobs. The landlord states the light fixtures in the bedroom and hallways had missing globes and the fixtures had to be replaced at a cost of \$80. The landlord states the hinges on the bathroom, master bedroom and bi-fold doors were damaged or pulled from the frame. The landlord seeks to recover \$50.00 for new hinges.

The tenant testifies that the carpets and underlay were old and stained. The tenant claims they steam cleaned the carpets but the stains came back through. The tenant agrees to pay for the landlord's carpet cleaning costs.

The tenant testifies that they had Molly Maid come in and clean the unit at the end of their tenancy at a cost of \$200.00 but states he no longer has the receipt for this work.

The tenant testifies that there was mould in the unit and the oven was dirty when he moved in with his sister and both the toilet and sink leaked which resulted in more mess. He states they did inform the landlord at that time and the landlord had them repaired but they started to leak again so the tenant states he gave up asking the landlord to repair them.

The tenant testifies that when he moved into the unit with his sister the front door frame and door were cracked and the lock was loose. He states he filled the cracks with epoxy but agrees he did not put the trim back on the door.

The tenant states the knobs on the bathroom cupboard did break off but states there was only one knob. The tenant agrees the light fixture in the bedroom did break. He states when he changed the light bulb he found the shade was cracked and brittle and it broke in his

hands as he changed the blub. He agrees he did not inform the landlord of this. The tenant states he does not remember a broken light fixture in the hallway. The tenant states as for the hinges on the doors when he moved in they were held in with nails which kept falling out. He states he kept putting them back in but they would fall out again.

The tenant calls his witness who is his sister. The tenants witness testifies that the front door was broken when they moved into the unit and they did request the landlord repair the door on two occasions but the landlord failed to do this.

The landlord declines to cross exam the tenants' witness.

The landlord states he did not repair the door because the tenant called him to say it had been repaired and someone had put a steel plate on the door. The landlord states the tenant had removed this plate.

The tenant states the plate dropped off because of the crack in the door.

### Analysis

Firstly, with respect to the landlord's claim for damages, the onus is on the landlord to prove a 4-part test for damages:

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

I have no evidence before me with respect to the actual or even estimated amount for repair to the unit and the landlord has failed to provide a copy of the condition inspection reports he has stated were carried out. The tenant also agreed he broke a light fixture and did not replace the beading on the door and one bathroom cabinet knob went missing. Therefore, I find that although the landlord has failed to satisfy elements two and three of the test for

damages I find as the tenant has agreed to pay for the carpet cleaning the landlord may deduct this sum of **\$220.00** from the tenant's security deposit. The tenant has also agreed they broke a light fixture and a bathroom cabinet knob. Because the landlords have not provided any receipts for these replacement items I find the landlords may recover a nominal amount for this damages and I have limited the landlords claim **\$20.00** for the light fixture and **\$5.00** for the bathroom door knob. The tenant also agreed he did not replace the beading on the front door however as the front door was replaced then no monetary sum to replace the beading will be awarded. Consequently it is my decision that the landlords are entitled to keep the sum of \$245.00 from the tenant's security deposit towards these damages and carpet cleaning. The balance of the deposit will be dealt with separately and the remainder of the landlord's claim for damages is dismissed.

With respect to the landlords claim to keep the balance of the security deposit; I refer the tenants to s. 24 of the *Act* concerning the tenant's obligations to attend a move out condition inspection. This states that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord has complied with section 23 (3) [*2 opportunities for inspection*], and the tenant has not participated on either occasion.

The landlord argues that they left messages for the tenants by telephone and e-mail and they failed to respond to these messages or turn up for any of the scheduled inspections and the move out inspection was completed in the tenant's absence. The tenant attending does not dispute that they were given opportunities to attend the inspection and consequently I find as they did not attend they have extinguished their right to the return of the security deposit. Although the landlords has not met the burden of proof for their claim for damages, as the tenants have extinguished their right to the return of the deposit the landlord is therefore still entitled to keep the balance of the security deposit.

As the landlord's have not fully established their claim for damages they must bear the cost of filing their own application.

### Conclusion

The landlord may retain the sum of **\$245.00** from the security deposit towards part of his claim for damages. The remainder of his claim for damages is dismissed without leave to reapply.

The landlords claim to keep the the tenants security deposit is upheld. The landlord may keep the balance of the security deposit of **\$429.00**.

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 29, 2011.

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Residential Tenancy Branch