



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MND, MNR, MNDC, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on September 15, 2011 for:

1. A Monetary Order for compensation or loss - Section 67;
2. An Order for the return of all or part of the security deposit – Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on June 21, 2011 for:

1. A Monetary Order for damage to the unit – Section 67;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation for damage or loss – Section 67;
4. An Order to keep all or part of the security deposit – Section 36; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Are the Parties entitled to their respective filing fees?

### Background and Evidence

The tenancy began on February 9, 2010, for a fixed period to August 09, 2010. A second tenancy was entered into for the period September 1, 2010 for a fixed period to February 28, 2011. The Tenants moved out of the unit on January 31, 2011. Rent in the amount of \$1,150.00 was payable in advance on the first day of each month. At the outset of the first tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$575.00 and a pet deposit in the amount of \$575.00. The second tenancy agreement notes that the security deposit was paid on the first tenancy agreement. No move-in inspection was completed by the Parties. The unit was new and had not been occupied by anyone prior to this tenancy.

The Landlord states that during the first tenancy, the Tenants failed to pay rent for March and April 2010 and that the Tenants suggested after the first missed rent payment that the Landlord use the security deposits to cover the missed rent. The Landlord claims \$2,300.00 for this unpaid rent. The Tenants deny missing any rent payments and state that they paid for March and April 2010 rents in cash on the second day of each of those months as they expected the cheques earlier provided to the Landlord for these months would not clear the bank as the Tenant had not had the chance to deposit his paycheque in time. The Tenant states that he dropped off the cash on both occasions at the Landlord's place of work. The Tenant states that no receipts were provided by the Landlord and the Tenants did not ask for receipts.

The Landlord states that the Tenants informed the Landlord in January 2011 of vacating the unit for the end of January 2011. The Landlord states that advertisements to rent the unit commenced online near the end of January 2011 and that the unit was rented for March 1, 2011. The Landlord claims \$1,150.00 for lost rental income for the month of February 2011. The Tenants state that they believed the tenancy was to end on January 31, 2011 and that they had this belief based on their memory as they did not have a copy of the tenancy agreement. The Tenants states that they may have lost the tenancy agreement.

The Landlord states that the Tenants damaged the unit and left it dirty at move-out. The Landlord states that at move-out the Parties carried out an inspection but no report was completed by the Parties. The Landlord provided photos of a damaged door and a wall with indiscernible marks. The Landlord submitted an invoice for \$1,850.00 and states that of this amount claimed \$235.00 was for carpet cleaning, \$300.00 for the cost of a replacement door and the remainder for the cost of painting all the walls, cleaning the unit and removing garbage.

The Landlord states that the unit and appliances were new at the beginning of the tenancy and that there were no previous occupants of the unit before the Tenants. A move-in condition inspection was not done and the Landlord states that at move-out, an inspection was done but no report was filled out by the parties. The Landlord states that although the stove top was badly scratched during the tenancy no claim was being made for the stove.

The Tenant states that the carpets were all steam cleaned at move-out and that the photo of the carpet provided by the Landlord is a small area of the carpet at the entrance where it had high volume. The Tenant supplied photos of the carpets taken at move-out along with a receipt for the steam cleaner. The Tenant agrees that the door was damaged by the Tenants during the tenancy and that he had offered to replace and install the door but that the Landlord did not accept this offer. The Tenant states that one wall in the unit had a television bolted onto the wall and that although the Tenant puttied the holes and intended to sand and paint the wall but did not finish due to the dispute with the Landlord.

The Tenants state that the forwarding address was provided in writing to the Landlord on January 15, 2011 and provided a copy of the letter. The Tenants were unable to explain how a letter dated January 15, 2011 could refer to incidents that occurred on January 27 and January 30, 2011. The Landlord states that he never received this letter and that it was not among the Tenant's evidence materials provided to him. The Landlord states that a previous decision dismissed the Tenants' application for return of

the security deposit. It is noted that this decision dismissed the Tenants' application with leave to reapply.

### Analysis

Section 67 of the Act provides that if a loss results from a party not complying with the tenancy agreement, compensation may be determined to be paid by the non-complying party. Determinations are made on a balance of probabilities and the party making the claim has the burden of so proving the claim. The Tenants dispute having missed two rent payments during the first tenancy agreement. Considering that the Landlord entered into a second tenancy agreement with the Tenants, I find it difficult to accept that Landlord would offer a second tenancy agreement with arrears outstanding from the first tenancy agreement. Further, had the Landlord agreed to apply the security deposits against the rental arrears, I find it difficult to accept that the Landlord would then have noted the security deposit as continuing from the first tenancy agreement. Accordingly, I find on a balance of probabilities that the Landlord has failed to substantiate this claim and I dismiss this part of the Landlord's application.

Section 45 provides that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy. Where a landlord makes a claim for losses related to an early end of a fixed term tenancy, the landlord is required to make reasonable efforts to mitigate those losses. As the Tenant ended the tenancy earlier than the specified end date, and accepting that the Landlord made reasonable efforts to mitigate losses arising from the early end by advertising the unit before the end of January, I find that the Landlord has substantiated a loss of rental income and is entitled to the amount of **\$1,150.00**.

Given the undisputed evidence that the Tenants damaged the door and did not complete the repairs to the one wall, I find that the Landlord has substantiated that the Tenants are responsible for the costs to repair the one wall and door. Considering however that the Landlord's invoice for repair costs does not include receipts for

supplies and does not set out any differentiation between the costs for the door replacement, wall painting, clean up and garbage removal, I find that a reasonable cost for these items would be \$300.00 for the door replacement and \$50.00 to sand and paint one wall. I therefore find that the Landlord is entitled to the amount of **\$350.00** for these repairs. The remainder of the costs claimed in this invoice are found to be unsubstantiated.

Considering the Tenants' photo and oral evidence and the provision of the carpet cleaning receipt, I find that the Landlord has not substantiated that the Tenants left the carpet unclean and I dismiss this part of the application.

Given that the Tenants' previous application for return of the security deposit was dismissed with leave to reapply, I find that the Tenant is not stopped from making their claim for return of double the security deposit.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Given the inherent discrepancy contained in the letter dated January 15, 2011, I find that the Tenants have failed to substantiate that their forwarding address has been provided to the Landlord as claimed and I find that the Tenants are therefore not entitled to return of double the security deposit. As the Tenants' application has not been successful, I make no order in relation to recovery of the filing fee.

As the Landlord's application has met with mixed success, I make no order in relation to recovery of the filing fee. The Landlord's total entitlement is **\$1,500.00**. Setting the security deposits plus interest in the amount of \$1,150.00 (575.00 + 575.00) off this amount leaves a sum of **\$350.00** payable by the Tenant to the Landlord.

Conclusion

I **order** that the Landlord retain the **deposit** and interest of \$1,150.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$350.00**. If necessary, this order may be filed in the Small Claims 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: September 29, 2011.

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Residential Tenancy Branch