



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security and pet damage deposits in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The parties agreed that this tenancy ended when the landlord agreed to let the tenant end her tenancy on September 15, 2011 as per the tenant's September 1, 2011 request to do so.

The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on September 30, 2011. I am satisfied that the landlord served this package to the tenant in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security and pet damage deposits in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for his application from the tenant?

### Background and Evidence

This one-year fixed tenancy commencing on October 1, 2010 was scheduled to end on September 30, 2011. As noted above, the landlord agreed to let the tenant end the tenancy by September 15, 2011, by which time the tenant vacated the rental unit. Monthly rent was set at \$1,900.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$950.00 security deposit and \$950.00 pet damage deposit, both paid on September 11, 2010.

The parties agreed that the landlord's representative convened a joint move-in condition inspection with the tenant which resulted in the production of a joint move-in condition inspection report on September 29, 2010. A copy of this report was not entered into written evidence. The parties agreed that they conducted a joint move-out condition inspection on September 15, 2011. However, the parties agreed that the landlord did not prepare a joint move-out condition inspection report.

The landlord applied for a monetary award of \$1,724.60 for damage arising out of this tenancy. In his application for dispute resolution, he stated that during the tenancy a retractable screen was damaged, repairs done by the tenant to the deck floor after a barbeque fire were unsatisfactory, interior walls were damaged in two rooms, repainting was required and there were multiple dents and scratches on hardwood in the rental unit. The landlord stated that the tenant never informed the landlord of the barbeque fire which damaged the deck. The landlord's application for a monetary award identified \$1,624.60 as the cost to replace the deck material and \$100.00 to replace the damaged screen. The landlord testified that he had a written quote from a deck centre and a verbal estimate from a company that replaces screens. Although he intended to submit the written quote into written evidence, this evidence was not submitted. He said that he has not performed work on either the deck or the screen, pending the outcome of this hearing. He said that the rental unit remains unoccupied.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

At the hearing, I heard conflicting oral testimony from the landlord and the tenant as to the quality of the tenant's repairs to the deck after the barbeque fire and as to the condition of the screen at the beginning and end of this tenancy.

The tenant testified that she was able to obtain a matched piece of decking to replace the damaged portion of deck and was able to properly repair the damaged decking.

The landlord said that the deck was poorly patched and required major repair work. The tenant testified that she did not need to use the screen during the early months of her tenancy and did not notice problems in the way that the screen opened and closed until she started using it when warmer weather came. The landlord said that the screen in question was in good working order when the tenancy commenced and is now damaged.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. Section 36(1) of the *Act* reads in part as follows:

***Consequences for tenant and landlord if report requirements not met***

**36** (2) *Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord...*

*(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...*

As the landlord did not produce a condition inspection report regarding the joint move-out condition inspection of September 15, 2011, I find that the landlord did not follow the requirements of the *Act*. I find that the landlord's eligibility to claim against the security and pet damage deposits for damage arising out of the tenancy is therefore limited.

Although the parties agreed that the deck and screen were damaged during this tenancy, they disagreed as to the adequacy of the tenant's repairs to the deck and whether the screen was damaged during this tenancy. I find that the landlord has not provided evidence that can verify the actual monetary amount of the loss or damage. He admitted that he has not undertaken the work to repair the damage to either the deck or the screen. He did not enter into written evidence any written estimate for either repair and did not submit photographs to support his assertion that the tenant did not conduct adequate repairs to the deck. His failure to provide a copy of the joint move-in condition inspection report and to prepare a joint move-out condition inspection report does not satisfy the onus that the landlord provide evidence to demonstrate that the

damage to the screen was beyond what could be expected during this tenancy from normal wear and tear for a rental unit of this age. For all of these reasons, I dismiss the landlord's application for a monetary award for damage arising out of this tenancy and for authorization to retain the tenant's security and pet damage deposits without leave to reapply.

As the landlord has been unsuccessful in his application, the landlord bears the cost of his filing fee for his application.

### Conclusion

I dismiss the landlord's application in its entirety without leave to reapply.

As the landlord's application to retain any portion of the tenant's security and pet damage deposits is dismissed, I issue a monetary Order in the tenant's favour in the amount of \$1,900.00 requiring the landlord to return all of the tenant's security and pet damage deposits plus applicable interest. No interest is payable over this period.

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: December 15, 2011

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Residential Tenancy Branch