



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD, MND, FF

### **Introduction**

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order to retain the security / pet deposit - Section 38
2. A monetary Order for Damages to the unit – Section 67
3. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given full opportunity to present all relevant evidence and testimony in respect to their claims and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Both parties received the other's evidence. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The relevant testimony and evidence in this matter is as follows. The tenancy began on July 30, 2010. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$425, which the landlord retains. The tenant vacated August 31, 2011. At the end of the tenancy the parties arranged for a mutual move out inspection. On the day of the inspection the tenant cancelled the 2:00 p.m. appointment, and it was agreed the tenant would call and arrange for an inspection when they were completed moving. The parties disagree as to what transpired thereafter, but a mutual inspection did not occur on August 31, 2011. The landlord proceeded to do their own inspection on that date and subsequently provided a copy of their inspection to the tenant. The landlord claims that the tenant left the unit with nail holes in the walls throughout as a result of removing certain fixtures: in particular, one

wall required remediation of a two (2) inch hole left by the tenant. The landlord claims this area required patching of the hole, sanding, and “touch up” painting. The landlord provided an invoice for, “touch up everywhere needed” in the amount of \$300 plus tax. The landlord claims that the claimed costs are for damage to the unit versus permissible wear and tear. The landlord testified that it is there practice to patch and paint minor wall deficiencies at the end of most tenancies.

The tenant disputes that the work for which the landlord is claiming was a result of damage; however, acknowledges that the landlord’s claim of a two (2) inch hole in one of the walls was caused by the them in removing a fixture, and that it required patching and refinishing. The tenant claims that the landlord’s claim is excessive and that any deficiency in the condition of the walls was reasonable wear and tear.

### **Analysis**

If a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs, or replacement (less depreciation), whichever is less. The onus is on the tenant to show that the expenditure is unreasonable or that it is not damage beyond reasonable wear and tear. The tenant is not responsible for reasonable wear and tear.

Residential Tenancy Policy Guideline 1. states the following in respect to responsibilities for residential premises:

#### **Nail Holes:**

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

On preponderance of the evidence in this matter, I find that the landlord was required to remediate most of the walls in the unit due to minor deficiencies caused by the removal of fixtures. The landlord’s contractor provided an invoice stating that “touch up” was needed everywhere. The parties agree that additional work was required for one area in particular, but there is no evidence proving that beyond this one area the suite required “touch up” beyond the normally required remediation for reasonable wear and

tear. I prefer the tenant's testimony that most of the damage claimed by the landlord was reasonable wear and tear. I accept the parties' testimony that the landlord needed to repair one hole in the suite which was beyond reasonable wear and tear. I find the agreed two (2) inch hole in one of the walls can be categorized as damage. As a result, I find the landlord is not entitled to claim for all the wall deficiencies as portrayed by the contractor's invoice. Therefore, I grant the landlord **\$125** for damage. As the landlord was partly successful in their claim, I grant the landlord partial recovery of the filing fee in the amount of **\$25**. As the landlord retains the damage deposit in the amount of \$425 and has applied to retain it, it is only appropriate that I return the balance of the deposit to the tenant.

*Calculation for Monetary Order*

Security deposit held by landlord	\$425.00
Filing Fee for this application to landlord / partial	-25.00
<b>Balance to tenant</b>	<b>\$275.00</b>

**Conclusion**

**I Order** that the landlord may retain **\$150** of the security deposit and return the balance to the tenant in the amount of \$275. I grant the tenant a Monetary Order under Section 67 of the Act in the amount of **\$275**. 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: December 12, 2011

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Residential Tenancy Branch