



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlord – MNSD, MND, FF

For the tenant – MNSD, FF, O

### Introduction

This hearing was convened by way of conference call in repose to both parties' applications for Dispute Resolution. The landlords have applied for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlords to keep all or part of the tenants security deposit; and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for a Monetary Order for the return of her security deposit, other issues and to recover the filing fee from the landlords for the cost of this application.

The hearing went ahead as scheduled and the landlord dialed into the conference call. The phone line remained open for 10 minutes however the tenant did not dial into the call during this time. Based on this I find that the tenant has failed to present the merits of her application and the application is dismissed without leave to reapply.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on September 22, 2011. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit?
- Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

The landlord testifies that this month to month tenancy started on June 26, 2010. Rent for this unit was \$850.00 per month and the tenant paid a security deposit of \$425.00 on June 26, 2010. The landlord testifies that a move in inspection was conducted with the tenant. The tenant gave notice to end the tenancy and moved from the rental unit on August 31, 2011. The tenant provided her forwarding address in writing to the landlord on September 14, 2011.

The landlord testifies that they were out of the country when the tenant moved out and had agreed with the tenant to get together to do the move out inspection on their return. The landlord testifies when they went to the unit they found that the door step had been damaged. The landlord states he contacted the tenant concerning this and was told she was unaware of it. The landlord states he sent the tenant a picture of the damage. The landlord states he told the tenant they would have the step repaired and advised her that it would cost \$200.00. The landlord testifies the tenant informed him her moving company had broken the step and states they told the tenant that the step was rotten.

The landlord testifies the repair to the step was made and the receipt was sent to the tenant. The landlord testifies the step was not rotten and the landlords informed the tenant that they had kept the broken step to show the tenant .

The landlord testifies the tenant did not agree that the damage was caused by the moving company and told the landlord she was not responsible as the step was rotten and wanted her security deposit back. The landlord states they then filed for Dispute Resolution on September 19, 2011.

The landlord testifies he deducted the cost of repair to the step and the filing fee for their application to a total sum of \$250.00 and returned the balance of \$175.00 to the tenant on September 17, 2011 by registered mail. The landlord seeks an Order to allow them to keep this portion of the tenant's security deposit for the damage to the step.

### Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having filed her own application; therefore, I have considered the landlords documentary evidence and affirmed testimony before me.

Section 38 of the Act states: Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The landlords made an application to keep part of the tenant's security deposit within 15 days of receiving the tenants forwarding address in writing. I further find the landlord has provided sufficient evidence to show that the door step has been damaged and it is likely that this damage was caused by the tenants moving company. The tenant did not appear at the hearing to offer any oral testimony about the moving company's position that the step was rotten. From the landlords photographic evidence it does not appear as if the wood is rotten under the step.

Consequently I find the landlords are entitled to keep **\$200.00** from the tenant's security deposit for the repair to the step. As the landlords have been successful with their claim I find they are also entitled to recover their **\$50.00** filing fee pursuant to s. 72(1) of the Act. The landlords are therefore entitled to deduct this from the security deposit also. As the landlords have already returned the balance of the deposit of \$175.00 to the tenant no further Orders are required for damage to the rental unit or for the return of the balance of the security deposit.

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#### Conclusion

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

The landlords claim is upheld. The landlord may retain the sum of \$250.00 from the tenants security deposit pursuant to s. 38(4)(b) of the Act.

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 07, 2011.

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Residential Tenancy Branch