



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For money owed or compensation for damage or loss under the Act; and
2. To keep all or part of the security deposit

The tenant's application is seeking an order as follows:

1. To return double the security deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### Preliminary matter

The landlord is claiming for damages to the rental unit.

The landlord testified that the rental unit has been sold as of the date of the hearing and that he has not had all the items on his itemized list fixed.

The tenant testified that the landlord has not incurred any loss for the items that he has not fixed and cannot prove any loss as required by the Act.

I find the landlord has not incurred any loss for items that were not fixed when the property was transferred to the new owners, therefore only the items listed below will proceed today on their merits and the balance of the claim is dismissed.

Issue(s) to be Decided

Is the landlord entitled to money owed or compensation for damages or loss under the Act?

Is the landlord entitled to keep all or part of the security deposit?

Is the tenant entitled to the return of double the security deposit?

Background and Evidence

The tenancy began on November 15, 2008. Rent in the amount of \$1,900.00 was payable on the first of each month. A security deposit of \$950.00 was paid by the tenant. The tenancy ended on September 30, 2011.

The parties agree that on October 1, 2011, the tenant provided the landlord with written notice of the forwarding address to return the security deposit.

The testimony of the parties was that the landlord did not perform either incoming or outgoing condition inspection reports.

The landlord testified that he is seeking compensation for damages caused by the tenant.

**Landlord's application**

The landlord claims as follows:

a.	Piles of garden Waste to be removed – dump fee \$12.00 - \$100.00 labour	112.00
b.	Bamboo and kiwi bush pruning - labour	60.00
c.	Removal of morning glory - labour	120.00
d.	Prune Laurel and bushes east side of yard - labour	200.00
e.	New burner grate	59.00
f.	Back door woodpecker knocker missing, remove bracket for door knocker - labour	15.00
g.	Toilet roll holder - broken	12.00
h.	Padlock missing to be replaced	15.00

i.	Area under kitchen sink damaged. Dishwasher connection to be repaired and sink base to be cleaned out doors replaced - labour	30.00
J	Damage to laminate floor	150.00
K.	Handle on door from kitchen to living room removed, new handled installed – labour	60.00
L	Drywall 5 inch hole – sand and paint all walls in front bedroom	150.00

The landlord testified that as a term of the tenancy agreement the tenant was required to perform ongoing maintenance to the yard.

The landlord further testified that he spent hours of his own time pruning the trees and shrubs and removing morning glory and is seeking to be reimbursed for his labour.

The tenant testified that they did perform regular maintenance of the yard, but they are not responsible for tree pruning or removal of plants.

The female witness who is the wife of the tenant testified that when they moved into the rental unit the yard was extremely overgrown and they spent many hours making the property look nice.

The landlord testified that part of the grate that covered the gas burner was broken and the tenant did not notify him that it was broken. It cost him \$59.00 to replace the grate.

The tenant testified that a piece of the grate did break, but it was due to normal wear and tear, and they were still able to use the stove. The tenant further stated that the stove was not new when they moved into the rental unit.

The landlord testified that the tenant removed the woodpecker door knocker and that he had to remove the bracket and replace the door knocker on the rental unit.

The tenant testified that they did remove the woodpecker door knocker after a few people were injured by the knocker.

The landlord testified that the tenant broke the toilet roll holder in the main bathroom and it cost him \$12.00 to replace the holder.

The tenant testified that it was a cheap holder and that it broke under normal wear and tear.

The landlord testified that the padlock is missing to the garage and is seeking \$15.00 for a new padlock.

The tenant testified that the padlock was on the outside door of the garage and was rusted due to rain, would not work and it was not damaged due to their neglect.

The landlord testified the dishwasher was leaking under the kitchen sink and caused damage to the cabinet below and seeks to be compensated for his labour.

The female witness, the wife of the tenant, testified the cabinet was rotten and dirty when they moved into the rental unit and it was not rotten due to a leak in the dishwasher. It was due to the hole in the wall allowing moisture into the cabinet.

The landlord testified that the tenant damaged the laminate floor in the bathroom and he replaced the laminate with tile and is seeking to be reimbursed half of the cost. The landlord further stated that there was no prior damage to the floor with other tenants that had resided in the rental unit.

The tenant testified that the damage to the floor was normal wear and tear and the reason other tenants did not have a problem with the floor was because they were not using the bathroom. When they moved into the rental unit there was no door on the bathroom.

The landlord testified that the crystal handle between the kitchen door and living room was removed and that he had to replace the door handle.

The tenant testified that the door handle was broken when they moved into the rental unit and the crystal door knob and its parts were left in a jar in the rental unit.

The landlord testified that he had to repair a five inch hole in the drywall. The tenant did make repairs to the drywall, but it had to be redone, sanded, and the entire room needed to be repainted to match the paint.

The landlord further testified that unit was fully renovated in 2005 and was repainted in 2006 and 2007 by other tenants.

The tenant testified that they did have an accident that damaged the drywall and it was repaired. The tenant stated they did not paint the patch as the entire room needed to be painted in any event.

The tenant further testified that they are not responsible to have the room painted as it was not newly painted when they moved into the rental unit and it should be painted every 3 or 4 years.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The parties disagreed on the meaning of ongoing maintenance. I must in this case refer to the policy guidelines 1 - **PROPERTY MAINTENANCE**

3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.
5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

As the landlord is claiming for damages for pruning and to remove all overgrown morning glory, I find that it was the landlord was responsible to maintain those items as set out above. Therefore, I dismiss the landlord's request for compensation for damages.

The evidence of the tenant was a piece of the grate that covered the gas burner did break under normal use.

The Residential policy guideline 1 - **MAJOR APPLIANCES** states:

1. The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

There was no evidence to suggest the damage to the grate on the stove was caused by the deliberate actions or neglect of the tenant. The evidence was that it broke under normal circumstances. Therefore, I dismiss the landlord's request for compensation.

To prove a loss and have the tenant pay for the loss requires the landlord to satisfy four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

- Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The evidence shows the tenant did remove the woodpecker door knocker, however, the landlord has not provided sufficient evidence as to the actual amount required to replace the knocker. There were no receipts submitted. Therefore, I dismiss the landlords request for compensation for damages.

There was no evidence to suggest that the damage caused to the toilet roll holder or the padlock was caused by the deliberate action or neglect of the tenant. The evidence was that the toilet roll holder broke under normal wear. The evidence on the padlock was that it was rusted due to being rained on. Therefore, I dismiss the landlord request for compensation for damages.

In the absence of a condition inspection report, I find there is insufficient evidence to meet the burden of proof establishing that the tenant damaged the area under kitchen sink, damaged the laminate floor or broke the door handle as set out in the application.

Section 23(1) of the Act states: The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

Section 23(4) of the Act states: The landlord must complete a condition inspection report in accordance with the regulations and (5) both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

Therefore, I dismiss the landlord's request for compensation for these damages.

The tenant testified that they repaired the hole in the drywall, but they did not paint the patch and the evidence of the parties was that the rental unit had not been painted for numerous years.

The Residential policy guideline 1 - **PAINTING** states:

The landlord is responsible for painting the interior of the rental unit at reasonable intervals.

The policy guideline section 37 sets the useful life span of interior paint at four years.

Therefore, I dismiss the landlord's request for compensation for the paint and sanding of the wall as the interior of the rental unit was due to be painted in any event.

Based on the above, the landlord's application for compensation for damages is dismissed in its entirety.

### **Tenant's application**

The parties agree that the landlord had the tenant's forwarding address on October 1, 2011.

There was no evidence to show that the tenant had agreed, in writing, that the landlord could retain any portion of the security deposit, plus interest.

There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit, plus interest. As a result, the tenant is entitled to double their security deposit.

By failing to perform incoming or outgoing condition inspection reports the landlord had extinguished their right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the Act.

The landlord has breached section 38 of the Act. The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer, or the written agreement of the Tenant. Here the landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit or interest.

### **Conclusion**

The landlord's application for a money owed or compensation for damage or loss under the Act is dismissed.

I must Order, pursuant to section 38 and 67 of the Act, that the landlord pay the tenant the sum of \$1,951.81, comprised of double the security deposit (\$950.00), and interest in the amount of \$1.83 and the \$50.00 fee for filing this Application.

The tenant is given a formal Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: January 10, 2012.

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Residential Tenancy Branch