



# 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 was scheduled to hear the landlord's application for a Monetary Order for damage to the rental unit and authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the commencement of the hearing I determined that the landlord had not served his evidence upon the tenant. As the Rules of Procedure require parties to serve their evidence upon the other party, I informed the parties that I would not accept, consider or otherwise look at the landlord's evidence. The landlord was permitted to provide verbal testimony as to his claims against the tenant.

Throughout the hearing the landlord insisted that I look at his photographs or send someone from the Branch to investigate to damage. I informed the landlord that the Branch does not investigate claims. The tenant submitted that without having the landlord's evidence before her she was unable to see what the landlord was claiming to be damage caused by her. I maintained that I would not look at the landlord's photographs in keeping with the Rules of Procedural and the principles of natural justice. The landlord was very agitated by my decision to exclude his photographic evidence. I referred the landlord to the Notice of Hearing and Fact Sheets provided to him when he filed his application.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant for damage to the rental unit?
2. Is the landlord authorized to retrain the security deposit or should it be returned to the tenant?

### Background and Evidence

The tenancy commenced May 1, 2011 and the tenant paid a \$675.00 security deposit. A move-in inspection report was prepared by an agent for the landlord. The tenant vacated the rental unit either May 1 or May 2, 2012. A move-out inspection report was not prepared by the landlord or an agent for the landlord.

The landlord submitted that he had asked an agent to perform the move-out inspection with the tenant but then the agent declined to participate. The landlord inspected the unit with the tenant May 2, 2012 but did not prepare a condition inspection report. Rather, the landlord took pictures of the rental unit, without the tenant present, a few days later.

The tenant submitted that on May 2, 2012 she asked for the landlord to prepare an inspection report but he refused to do so. On May 10, 2012 the tenant sent her forwarding address to the landlord and the landlord acknowledged receiving it May 11, 2012. The landlord filed this application on May 17, 2012.

### **Landlord's position**

The landlord is seeking to recover \$1,400.00 plus HST for damaged carpeting, based on a verbal estimate he received. The landlord is seeking \$1,000.00 to repaint the rental unit based upon a verbal estimate he received.

The landlord submitted that the carpeting was installed approximately three years ago at a cost of \$1,800.00 and that at the end of the tenancy approximately 30 square feet of carpeting needs to be replaced. The landlord explained that the damaged carpeting remains in place, along with new tenants, so that the Residential Tenancy Branch can send a staff person to investigate the damage.

The landlord submitted that the rental unit was painted three months before the tenancy commenced and at the end of the tenancy there were large screw holes in the walls and the wall colour was a shade darker. The landlord attributed the darker wall colour to dirt, handprints and the tenant's children colouring on the wall.

### **Tenant's position**

The tenant denied causing damage to the carpet as submitted by the landlord but acknowledged there was very small area, less than 30 square feet, that was worn. In the absence of the landlord's evidence the tenant was unaware of what damage the landlord was referring to.

The tenant made effort to clean the walls but acknowledged the walls were not left perfectly clean. However, the tenant pointed out that some walls were dirty when she moved in, as indicated on the move-in inspection report prepared by the landlord's agent. The tenant denied that her children coloured on the walls. The tenant acknowledged putting up some pictures in the unit, perhaps one per wall, but that it was not excessive.

The tenant also questioned the landlord's submission that the unit was painted just before the tenancy began as the move-in inspection report indicates there were patches and holes in walls when she moved in.

The tenant requested return of double her security deposit plus compensation for overpayment of utilities. I informed the parties that I would deal with the security deposit as disposition of the security deposit was an issue to be determined under the landlord's application; however, if the tenant intended to pursue the landlord for overpaid utilities she would have to file her own Application for Dispute Resolution.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. Verification of the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I find the disputed verbal testimony as to the condition of the rental unit at the end of the tenancy to be insufficient to conclude the tenant damaged the property as stated by the landlord. It is important to note that normal wear and tear is not damage and is not recoverable by a landlord.

Further, considering the tenant was provided a move-in inspection report describing pre-existing holes and patches in the walls I find the landlord's submission of the condition of the unit as being recently painted to be unsupported and likely inaccurate.

Finally, the landlord did not provide evidence to substantiate the amounts he was claiming against the tenant.

For all of the reasons indicated above, I find the landlord failed to meet the criteria outlined above in order to establish an entitlement to compensation from the tenant and I dismiss the landlord's claims against the tenant.

Having dismissed the landlord's claims against the tenant I order the landlord to return the security deposit to the tenant. I am satisfied the landlord filed this application within 15 days of receiving the tenant's forwarding address and I do not order return of double the security deposit.

Provided with the tenant's copy of this decision are Monetary Orders in the amount of \$675.00 for the tenant serve upon the landlord and enforce as necessary.

### Conclusion

The landlord's claims against the tenant have been dismissed. The landlord is ordered to return the security deposit to the tenant. The tenant has been provided a Monetary Order in the amount of \$675.00 to serve upon the landlord and enforce as necessary.

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: July 27, 2012.

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Residential Tenancy Branch