



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

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

The landlord's application is seeking orders as follows:

1. A monetary order for damages to the unit; and
2. To keep all or part of the security deposit.

The tenants' application is seeking orders as follows:

1. For the return of all or part of the security deposit;
2. For compensation for under the Act; and
3. To recover the cost of filing the application from the tenants.

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 at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damages to the unit?

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

Are the tenants entitled to the return of all or part of the security deposit?

Are the tenants entitled to monetary compensation under the Act?

### Background and Evidence

The tenancy began on June 23, 2011. Rent in the amount of \$1,250.00 was payable on the first of each month. A security deposit of \$625.00 and a \$75.00 key fob deposit were paid by the tenants. The parties participated in a move-in and move-out inspection.

## Landlord's Application

### Stove

The landlord testified that the tenant damaged the stove as the digital numeric pad was not fully working. The landlord stated the tenants also damaged the inside of the oven by not cleaning the oven and this damaged the paint. The landlord seeks to be compensated for the damaged stove in the amount of \$315.00.

The tenant testified the digital numeric # 4,5, and 6 were not functioning at the start of the tenancy and that it was easy to operate the oven temperature by selection a heat temperature that did not require those numbers. The tenant stated the numeric pad was not tested at the move-in inspection. Filed in evidence is a photograph of the stove top.

The tenant testified the oven was used under normal circumstance.

### Living room blinds and hole in bedroom wall

The landlord testified that there was a missing horizontal panel in the living room blinds and seeks to be compensated. The landlord testified that there was also a two inch hole in the bedroom wall. The landlord seeks to be compensation \$50.00 for these two items.

The tenant testified that the blinds were not closed when they moved into the rental unit to see if all the panels were in place. The tenant stated prior to moving into the unit they took photograph and the photograph would indicate the panel was missing at that time. Filed in evidence is a photograph.

The tenant testified there was no issue with the bedroom wall at the move-out inspection and the door stop was not aligned properly to prevent the door from hitting the wall. The tenant disputes that it was a two inch hole in the wall.

## Tenants' Application

The tenant testified the carpets were not cleaned at the beginning of the tenancy. The tenant stated he was not seeking compensation for have them cleaned until the landlord filed his application. The tenant seeks to recover \$253.12.

The tenant testified the landlord failed to provide him with a copy of the move-in inspection and the move-out inspection report as required by the Act.

The landlord testified he mailed a copy of the tenancy agreement and move-in inspection to the tenant in the same package. The landlord states the tenant has a copy of the tenancy agreement, therefore, he has a copy of the move-in inspection report.

The landlord testified the tenant was provided a copy of the move-out inspection at the end of tenancy, when the tenant attended his residence. The landlord stated he made a copy using the copy function on his fax machine.

### Analysis

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

To prove a loss and have one party pay for the loss requires the other party to prove 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 Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the landlord has the burden of proof to prove a violation of the Act and a corresponding 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.

### Landlord's Application

#### Stove

In this case, the landlord is seeking compensation for the digital number pad on the stove. The evidence was the digital numeric pad was not tested at the move-in inspection.

Under the Residential tenancy Policy Guideline #1, the landlord is responsible for repairs to the appliances provided under the terms of the tenancy agreement, unless the damage was caused by the deliberate actions or neglect of the tenant.

I find the landlord has failed to prove that the digital numeric pad was working at the start of the tenancy or that the tenants deliberately cause damage to the pad.

Further, the evidence of the landlord was the tenant damaged the inside of the oven. However, the evidence of the tenant was it was normal wear on the stove. I find the

landlord has failed to prove the damage was caused by the deliberated actions or neglect of the tenant.

Based on the above, I dismiss the landlord claim for compensation for the stove.

#### Living room blinds and hole in bedroom wall

In this case, the parties participated in a move-in and move-out inspection. The landlord has failed to provide copies of those reports into evidence.

Section 21 of the Act States a condition inspection report completed in accordance with this section is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this case, the photographic evidence of the tenant supports the blind was missing at the start of tenancy.

The evidence of the tenant was the damage to the bedroom wall was not discussed at the move-out inspection, and disputes a two inch hole. In the absent of any photographs of the damaged wall or a copy of the move-out inspection. I find the landlord has failed to prove the damage existed.

Based on the above, I dismiss the landlord claim for compensation for the living room blind and hole in bedroom wall.

As a result of the above findings the landlord's application is dismissed. The landlord is not entitled to recover the cost of filing his application.

#### Tenants' Application

The tenant is seeking compensation for the carpet cleaning that was done at the start of the tenancy. The tenant did not make any request to the landlord to have the carpets cleaned. I find the tenant has failed to prove that he made reasonable efforts to mitigate the loss. As a result, the tenants' claim for carpet cleaning is dismissed.

The evidence of the tenant was the landlord failed to provide a copy of the move-in and move-out inspection report. The evidence of the landlord was he provided a copy of the move-in inspection with the tenancy agreement and a copy of the move-out inspection to the tenant in person. As each party has provided a version that is equally probable, without further evidence. I find the tenant has failed to prove the landlord had extinguished their right to claim against the deposit. As a result, Section 38(6) of the Act does not apply (double the security deposit) in this case.

As a result of the above findings the tenants' application for compensation is dismissed. The tenant is not granted to recover the cost of filing their application from the landlord.

However, as I have dismissed the landlord's application for compensation for damages the landlord is required to return the tenants security in the amount of \$700.00, this includes the deposit for the key fob.

I grant the tenants a formal monetary order in the amount of **\$700.00**. 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.

### Conclusion

The landlord's application is dismissed.

The tenant's application for compensation is dismissed.

The tenants are granted a monetary order for the return of the security deposit, should the landlord fail to return the deposit to the tenants.

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: October 25, 2012.

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Residential Tenancy Branch