



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MND, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for alleged damage to the rental unit, an order to retain a portion of the security deposit in satisfaction of the claim, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

### Background and Evidence

This tenancy began on November 1, 2011, for an initial fixed term of six months. The rent was set at \$2,600.00 per month and the Tenant paid the Landlord a security deposit of \$1,300.00 at the outset of the tenancy.

Both parties agree that incoming and outgoing condition inspection reports were performed. In the outgoing condition inspection report the Tenant signed to allow the Landlord to retain \$300.00 from the security deposit, although the Tenant testified she did not really agree with the Landlord's assessment of the rental unit at the end of the tenancy. The Tenant testified that the outgoing condition inspection report went on too long and that she felt the Landlord overdid it.

The Landlord returned \$1,000.00, the balance of the security deposit, to the Tenant shortly thereafter.

Around the end of August 2012, the Landlord discovered that rails that attach to a television set which allowed it to be attached to a wall mount were missing. The Landlord wrote an email to the Tenant as well as a letter, requesting the Tenant return these rails.

The Tenant did not reply to the Landlord's correspondence and the Landlord filed this claim to recover the cost of replacing the mounting hardware, in the amount of \$165.76, which includes installation. According to the Landlord the entire mounting mechanism must be replaced.

Both parties agree that the missing rails were in the rental unit at the beginning and during the tenancy. The Tenant acknowledged she used the mounting system for her own television.

The Tenant testified that when she was moving out of the rental unit she had people helping her. She testified that a contractor she knows removed the television from the wall and she moved it in her car. The Tenant testified she was not looking over his shoulder as he did the work. The Tenant testified she did not ask the contractor about these brackets. The Tenant testified that she has looked for the hardware in the property she removed from the rental unit, but did not locate the missing rails.

The Tenant suggested several places in the rental unit where the rails might have been moved to without her or the Landlord knowing. The Landlord testified that she has searched all these places, as well as the entire rental unit and was unable to locate the missing items.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenant has breached section 37 of the Act and the tenancy agreement by failing to return the rental unit to the Landlord undamaged.

While I do not find the Tenant intentionally removed the missing items, it was her responsibility to return the rental unit to the Landlord undamaged, except for reasonable wear and tear. I do not find that missing rails are reasonable wear and tear.

Since the Tenant did not return these to the Landlord, I find the Landlord has suffered a loss to replace the items.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Landlord has established a monetary claim for the replacement of the items. Nevertheless, I also must not allow the Landlord to be unjustly enriched by replacing a used mounting system with a new mounting system. Therefore, I deduct 15% of the value of the new hardware to allow for the depreciation of the used hardware.

Accordingly, I find that the Landlord has established a total monetary claim of **\$190.90**, comprised of \$140.90 for the depreciated value of the hardware (\$165.76 less 15%) and the \$50.00 fee paid for this application, and I grant the Landlord an order under section 67 for the balance due. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

I find the Tenant removed television mounting hardware from the rental unit and must compensate the Landlord for this loss.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 30, 2012.

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Residential Tenancy Branch