



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MND, MNR, MNSD

### Introduction

This hearing dealt with an application by the landlord seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

Is the landlord entitled to retain the security deposit?

### Background and Evidence

The landlords agent gave the following testimony; rent in the amount of \$2330.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$1150.00, took over as the property manager in July 2010, attended at the subject unit several times to conduct repairs and inspections, on June 27, 2012 received written notice from the tenant that he would be ending the tenancy on July 31, 2012, the landlord provided the tenant a document to schedule a condition inspection at the end of tenancy, the tenant was late in paying the July rent, the tenant eventually paid all but \$30.00 of the rent, a walk thru was done by both parties on July 31, 2012, the property manager informed the tenant that the painting that the tenant had conducted had not been authorized and it might be a problem, needed to confer with the landlord as to whether it was acceptable or not, had no other issue as to the condition of the suite, seeks \$30.00 of unpaid rent and \$627.20 for painting the walls to the original colour, has returned \$475.69 of the security deposit to the tenant

The tenant gave the following testimony; moved into the unit in May 2008, asked the property manager at that time as to whether he would be allowed to paint some of the walls in the suite, was informed that as long as it was done properly it wasn't an issue, had the walls painted within two weeks of moving in, the previous and present property manager attended the unit numerous times to conduct repairs and inspections and never mentioned the colours being an issue, the tenant had the unit professionally cleaned and was told at the condition inspection at move out that there was no issues with the state of the unit except for the colour of several walls and that the property manager would make further inquiries, the tenant provided his forwarding address on September 18, 2012 and on September 20, 2012 was served by the property manager for an "arbitration hearing", the tenant was taken aback to this as he felt that they had no issues with each other, the tenant feels that he should not be responsible for the costs of repainting the unit four and half years later after having initially received authorization from the previous property manager, the tenant is asking for the return of \$627.20.

### Analysis

As explained to the parties at the outset of the hearing the onus or burden of proof is on the party making the claim, in this case the landlord. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. Both parties provided documentary evidence for this hearing; that along with their testimony was considered when making a decision.

Both parties agree that the initial deposit was \$1150.00 and that interest accrued is \$10.89 for a total of \$1160.89. Both parties agree that the landlord is entitled to the \$30.00 of unpaid rent as well as the \$28.00 for the replacement of a mailbox key for a total of \$58.00 to the landlord. Both parties further agree that the tenant has already

received \$475.69. After all deductions the remaining amount of the security deposit is \$627.20

As the landlord is the sole applicant in this matter I will address his claims and my findings as follows:

**First Claim** – The landlord is seeking \$30.00 of unpaid rent. The tenant acknowledged the shortfall in rent and does not dispute the claim made by the landlord. I find that the landlord is entitled to \$30.00.

**Second Claim** – The landlord is seeking \$627.20 for repainting the walls to the original colour. The landlord is of the position that the tenant conducted this painting without the landlords' approval. The landlord's agent provided an addendum to their tenancy agreement that outlines that any decoration or renovation must be conducted with the authorization of the landlord. The landlords' agent provided an "estimate" to reflect the costs sought by the landlord. The tenant adamantly disputes this portion of the landlords claim. The tenant was clear and consistent throughout the hearing that he had obtained the authorization of the previous property manager. Based on the testimony of both parties and on the balance of probabilities I accept the testimony of the tenant.

The landlords' agent was unable to satisfy me of their claim for the following reasons; the tenant signed a tenancy agreement along with an addendum on November 30, 2009 that required the tenant to obtain the landlords authorization prior to conducting any repairs or decoration to the unit, however the tenant moved into the unit on May 15, 2008. The landlords' agent provided a condition inspection report that reflects that date as the move in date to this unit. I asked the agent on three separate occasions as to whether this date was correct. He confirmed it to be correct. The tenant also confirmed that date. The tenant was very clear that the painting of the walls was done within two weeks of move in. The agreement for the painting of the suite was done 18 months prior to the parties signing the addendum that the landlords' agent is relying on for this hearing. The landlords' agent was not employed to manage this property at the time the tenant moved in. It's reasonable and completely understandable that the agent would

not have first hand evidence as to why the landlord signed a tenancy agreement and addendum 18 months after the tenant had moved in but on that same point the landlords agent was not in a position to dispute the agreement made by the tenant. The present property manager commenced employment on July 2010. When asked if he had any knowledge of the agreement that occurred in May 2008 he would refer to the tenant and ask “can you clarify all of this for us?” Based on all of the above I find that that the tenant is entitled to the remainder of the security deposit.

As for the monetary order, I find that the tenant has established a claim for \$627.20. I grant the tenant an order under section 67 for the balance due of \$627.20. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

#### Conclusion

The tenant is granted a monetary order for \$627.20.

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 12, 2012.

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Residential Tenancy Branch