



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on October 19, 2012 for:

1. An Order for return of double the security deposit – Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on December 3, 2012 for:

1. A Monetary order for damages to the unit – Section 67;
2. A Monetary Order for compensation – Section 67;
3. A Monetary Order for unpaid utilities – Section 67;
4. An Order to retain all or part of the security deposit – Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their respective filing fees?

### Background and Evidence

The tenancy started on May 1, 2012 and ended on September 30, 2012. Rent of \$1,800.00 was payable monthly and the Landlord collected \$1,800.00 as a security deposit. After the end of the tenancy, the Landlord returned \$407.50. The Parties mutually conducted both a move-in and move-out condition inspection however the Landlord did not send a copy of the move-out report to the Tenant. The Tenant received a copy of the move-out report in the materials provided by the Landlord for this Hearing.

The Landlord withdraws the claim for washing of the unit walls and states that the Tenant left the unit unclean with damages and claims as follows:

- \$1,700.00 for the cost of replacing two damaged stair treads, noted on the move-out report, photos included. The Landlord states that the Tenant told the Landlord that a piece of furniture was dropped on the stairs at move-in. The Landlord provided an email conversation with the person who originally constructed the stairs and this email estimates a cost of \$500.00 to 700.00 for the replacement of each stair tread. The Landlord states that the stairs were new and cost \$10,000.00 for the original construction;
- \$120.00 for the cost of sanding and painting a wall that the Landlord states was damaged by the Tenant who had hung shelves on the wall. The Landlord states that the holes in the walls were patched and filled by the Tenant but that due to the numerous marks the entire wall required painting. The Landlord states that the claim is for his own labour of 3 hours at \$30.00 per hour and for the cost of paint supplies. The Landlord states that no costs were incurred for the supplies as they had paint available from previously;
- \$550.00 for damage to the floor in the den. The Landlord states that although this damage is not marked on the move-out inspection, it was noticed later. The Landlord states that the amount claimed is the Landlord's own estimate of time and materials and that the Landlord does not have sufficient materials on hand to replace the floor areas that was scratched;

- \$250.00 for yard clean-up. The Landlord states that the Tenant failed to mow the lawn and that the labour to clean the yard was performed by the Landlord. The Landlord states that this task is not included in the tenancy agreement; and
- \$50.00 for the cost of propane. The Landlord states that at the end of the tenancy the propane tank used for the stove was not full and that the Landlord shook the tank to determine how much propane had been used. The Landlord states that the propane tank was not filled for the next tenancy.

The Tenant states that a stapler was dropped on the stairs causing small dents and that these dents are reasonable wear and tear for the use of stairs that could reasonably be expected to have heavy traffic. The Witness states that as a trades painter and antique restorer he believes that the stairs could have easily been repaired with a transparent burn in stick and that the amount claimed by the Landlord is excessive as the repair would only have taken a couple of hours.

The Witness states that the wall had six small holes from the shelving unit and that these holes were patched and sanded by the Witness and that had paint been available, the wall patches would have been painted as well. The Witness states that any other marks on the wall were from picture holes and that the Tenant is not responsible for these as they are normal wear and tear. The Tenant argues therefore that the Tenant should not be responsible for the cost of painting the entire wall.

The Tenant does not dispute that the floor den was damaged by the Tenant moving a furniture item but states that the scratch was hardly noticeable.

The Tenant states from the onset of the tenancy the Tenant asked that the yard be maintained but that this never occurred.

The Parties spoke to the matter of liquidated damages however it is noted that the Landlord did not include this claim in the application.

The Tenant claims return of double the security deposit.

### Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord failed to make an application for dispute resolution claiming against the security deposit, and failed to return the security deposit within 15 days of receipt of the Tenant's forwarding address, I find that the Landlord is required to pay the Tenants double the security deposit in the amount of **\$2,600.00**. As the Landlord has returned \$407.50 to the Tenant, I find that the remaining amount of **\$2,192.50** is owed by the Landlord to the Tenant. As the Tenant's application has been successful, I find that the Tenant is also entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$2,242.50**.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Given the photos of the dents on the stairs and accepting the Tenant's argument that heavy use is to be expected on stairs, I find that the dents on the stairs are reasonable wear and tear and that the Tenant is not liable for such wear and tear to the stairs. I therefore dismiss this claim.

Given the Tenant's evidence that some remedial work was required to repair the damage from the shelves and that paint was not used to cover the remedial work, I find

that the Landlord has substantiated that paint was required to cover the remedial work done by the Tenant. I find however that as no invoices were provided to support the cost of supplies, the cost for supplies has not been substantiated by the Landlord. Further, based on the evidence of the Tenant that the holes patched were few in number and considering that the Landlord did not provide photos of the damaged wall, I find that the Landlord is only entitled to a nominal amount of **\$50.00** to cover the work done by the Landlord to paint the six patched marks on the wall.

Given the move-out report that does not indicate any damage to the floor and given the Tenant's evidence that the scratch was hardly noticeable, I find that the Landlord has failed to substantiate on a balance of probabilities that the Tenant damaged the floor beyond normal wear and tear. I therefore dismiss this claim.

Given the lack of a term within the tenancy agreement indicating the Tenant's responsibility for yard work, I find that the Landlord has not substantiated on a balance of probabilities that the Tenant was responsible for the yard work completed by the Landlord at the end of the tenancy and I dismiss this claim.

Based on the Landlord's evidence that the propane tank was shaken to determine usage and that the Landlord did not refill the tank, I find that the Landlord has failed to substantiate any costs and I dismiss this claim.

Although the Parties spoke to the issue of liquidated damages, considering that the Landlord has not included this claim in the application, I find that I am unable to make any determination of this matter. The Landlord is at liberty to make an application on this matter if so desired.

The Landlord has been found to be entitled to **\$50.00**. As the Landlord has not been substantially successful with its claim, I decline to award recovery of the filing fee. Deducting the Landlord's entitlement of **\$50.00** from the Tenant's entitlement of **\$2,242.50** leaves **\$2,192.00** owing by the Landlord to the Tenant

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$2,242.50**. If necessary, this order may be filed in the Small Claims 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 21, 2013