



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord confirmed that on July 20, 2012, the tenant handed her the tenant's written notice to end this tenancy by August 31, 2012. The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on October 18, 2012. I am satisfied that the parties served the above documents to one another in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The parties agreed that this tenancy commenced initially as a six-month fixed term tenancy on April 1, 2006. At the expiration of the initial term, the tenancy continued as a periodic tenancy. By the time this tenancy ended on August 31, 2012 and the landlord took possession of the rental unit, the monthly rent was set at \$820.00, payable in advance on the first of each month, plus utilities.

The parties agreed that the tenant paid a \$160.00 security deposit on March 21, 2006, when she transferred to this rental unit from another of the landlord's rental units. The

parties also agreed that the tenant had established a credit of \$175.00 for a security deposit that she paid for the previous tenancy that commenced on approximately April 1, 2003. The landlord testified that her office had discovered a few days earlier that the tenant's \$175.00 security deposit was returned to the tenant when she commenced the tenancy of April 1, 2006. She provided no written evidence to confirm this assertion. The tenant testified that only \$75.00 of that security deposit was returned to her in 2006, and the remaining \$100.00 of her previous security deposit has been retained by the landlord for the new tenancy that she commenced on April 1, 2006.

The parties agreed that they conducted a joint move-in condition inspection on April 6, 2006. A copy of the move-in condition inspection report was entered into written evidence, as was a copy of the landlord's August 31, 2012 move-out condition inspection report, conducted solely by the landlord.

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters, invoices, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

The landlord's application for a monetary award of \$1,144.48 included the following items:

<b>Item</b>	<b>Amount</b>
Suite Cleaning	\$440.00
Carpet Cleaning	140.00
Drywall Repairs in Hall	65.00
Drywall Repairs in Bedroom	30.00
Back Yard Repairs	250.00
Grass Seed	40.00
Screen Door & Screen Repairs	195.00
Remove TV, Phone & Cables, Fill Holes in Walls & Repair Baseboards	150.00
Less Security Deposit	-165.52
<b>Total Monetary Award Requested</b>	<b>\$1,144.48</b>

The landlord also applied to recover the \$50.00 filing fee for this application.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the

party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age. Section 37(2) of the *Act* also requires a tenant to leave the rental unit “reasonably clean, and undamaged except for reasonable wear and tear” at the end of a tenancy.

Based on the evidence submitted, I am satisfied that the landlord did exert proper effort to arrange for a joint move-out condition inspection of the rental unit. The tenant did not attend the move-out inspection and did not appoint an agent to participate in a joint move-out condition inspection if she could not participate in one herself at that time.

After comparing the condition of the premises at the time that this tenancy began with that noted at the end of this tenancy as set out on the condition inspection reports, I find that there was deterioration in the condition of the premises, requiring considerable repair work by the landlord. The photographs also reveal that the premises did require cleaning and some repair at the end of this tenancy. However, I am also mindful that this tenancy lasted for over six years and reasonable wear and tear could be expected over that period. The tenant’s advocate and the tenant did not dispute that the rental unit was dirty at the end of this tenancy and required some cleaning and repair. However, they disagreed with the size of the landlord’s claim and, in particular, the landlord’s claim for extensive work to repair the back yard of this property and to reseed that yard.

After reviewing all documents, the photographs submitted by the landlord and the sworn testimony, I find that the tenant has not complied with the requirement under section 37(2) of the *Act* to leave the rental unit reasonably clean and undamaged. I find that landlord is entitled to a monetary award for some damage and losses arising out of this tenancy that exceed what could be anticipated for reasonable wear and tear. I have reduced the landlord’s claim for suite cleaning by \$100.00 to \$340.00, an amount that I believe more accurately reflects the cleaning required at the end of this tenancy. I allow the landlord’s requested monetary claims for carpet cleaning, repairs to drywall, repairs to the screen door and screen repairs and for the removal of the TV, phone and cables, and the associated filling of holes and repair of the baseboards. However, I find that some of these repairs are attributable to normal wear and tear. According to the RTB’s Policy Guideline 40, the rental premises would be due for repainting as it had not been repainted for more than four years, the usual useful life of an interior paint job. For

these reasons, I reduce the amount of the landlord's entitlement for these items by \$100.00 to reflect reasonable wear and tear that would have required some of the work claimed by the landlord at the end of this tenancy. I also find that the landlord is eligible to recover only \$60.00 of the costs the landlord has claimed for back yard repairs and grass seed, as I find that these items may have become necessary by the end of a six-year tenancy to a family with young children. The \$60.00 allowance enables the landlord to recover 3 hours of labour at a rate of \$20.00 per hour.

Based on the evidence submitted and on a balance of probabilities, I find that the landlord has not provided sufficient evidence to demonstrate that the retained value of the tenant's security deposit is \$160.00. I find that the landlord bears the burden of proof to substantiate the landlord's claim that all \$175.00 of the tenant's previous security deposit was returned to her in April 2006. Under these circumstances, I find that the security deposit for this tenancy is \$260.00 (i.e., \$175.00 paid in 2003 + \$160.00 paid on March 21, 2006 - \$75.00 returned to the tenant in April 2006 = \$260.00) plus applicable interest. I allow the landlord to retain the tenant's security deposit of \$260.00 plus applicable interest in partial satisfaction of the monetary award issued in this decision. As the landlord has been successful in this application, I allow the landlord to recover the filing fee from the tenant.

### Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which enables the landlord to recover damage and losses arising out of this tenancy and to recover the filing fee for this application, and to retain the tenant's security deposit:

<b>Item</b>	<b>Amount</b>
Suite Cleaning	\$340.00
Carpet Cleaning	140.00
Drywall Repairs in Hall	65.00
Drywall Repairs in Bedroom	30.00
Back Yard Repairs and Grass Seed	60.00
Screen Door & Screen Repairs	195.00
Remove TV, Phone & Cables, Fill Holes in Walls & Repair Baseboards	150.00
Less Reasonable Wear and Tear	-100.00
Less Security Deposit plus interest (\$100.00 + \$3.54 + \$160.00 + \$5.49 = \$269.03)	-269.03
Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$660.97</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 17, 2013

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Residential Tenancy Branch

