



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Pinnacle International Realty Group II

## **DECISION**

Dispute Codes      MNSD, MND, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing them to retain the security deposit. Both parties participated in the conference call hearing.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy began on October 1, 2010 at which time the tenant paid a \$525.00 security deposit and a \$60.00 deposit for a garage fob. The parties further agreed that the tenant vacated the rental unit in mid-October 2012. Although a condition inspection of the unit was performed at the beginning of the tenancy and a report generated (the "Report"), the parties did not inspect the unit together at the end of the tenancy.

The landlord seeks to recover \$800.00 as the cost of repainting the bathroom wall and ceiling and repairing the floor in that room. The landlord testified that when the tenancy began, there were a few spots on the bathroom ceiling which may have been mould related. The Report shows that the bathroom ceiling needed to be repainted. The landlord testified that the bathroom was repainted twice during the tenancy, but that at the end of the tenancy, there was a significant amount of mould on the ceiling and walls.

The landlord testified that the bathroom had to be repainted again because of the mould and that an area of the floor also had to be repaired as water had built up and damaged it. She testified that the plywood under the floor had to be replaced because it had rotted. The landlord provided photographs which she testified were taken in her presence during the last month of the tenancy. The photographs show significant

staining on the walls and ceiling and show an area of the floor around the toilet that is badly discoloured.

The tenant questioned whether the photographs were taken in the rental unit, although she acknowledged that the shower curtain shown in one photograph looked “kind of” like hers and further acknowledged that a red plastic basin in a second photograph was hers.

The tenant argued that the landlord had lost the right to claim against the security deposit as she had failed to complete a move-out inspection of the unit. The tenant claimed that the floor around the toilet was stained when she moved in to the rental unit and that the landlord repainted the bathroom at the tenant’s request because of the stains that kept appearing.

### Analysis

I will first address the tenant’s claim that the landlord does not have the right to make this claim. Section 35 of the Act requires a landlord to arrange for and conduct a condition inspection of the unit and to generate a report at the end of the tenancy and section 36 provides that if the landlord fails to do so, the right to claim against the security deposit is extinguished. However, the Act does not prevent the landlord from making a claim for damage to the unit and as section 72 permits me to apply the security deposit to any award made to the landlord, I find that despite the landlord having extinguished her right to claim against the security deposit, she is not prevented from making this claim.

Having heard the testimony of the parties and examined the photographs, it is clear that this unit has an ongoing mould problem. The tenant had an obligation to act reasonably to clean the unit during the tenancy and it is likely that had she done so, the mould would not have progressed to the extreme state shown in the photographs. However, the photographs show that the area immediately near the ceiling fan was not as badly affected as other areas, which leads me to believe that the fan was operating, but was inadequate.

The fact that mould was present at the beginning of the tenancy and was simply painted over only to grow again, indicates that the landlord did not properly treat the affected areas prior to painting in order to ensure that the mould had been eradicated prior to repainting. I find it more likely than not that the mould problem was caused by both the landlord’s failure to kill the mould prior to repainting and the tenant’s failure to adequately clean.

I find it more likely than not that the staining on the floor around the toilet and the damage to the plywood underneath was caused by a buildup of condensation on the toilet tank dripping to the floor below. Again, this is a situation in which both parties must shoulder some responsibility. I find that the bathroom fan is likely inadequate, which has resulted in there being an excess amount of moisture in the bathroom, and that this situation combined with the tenant's failure to wipe up the water from the floor caused the damage to the linoleum and plywood.

I find that because both parties are responsible for the damage, they should share in equal part the cost of the repairs. I award the landlord \$400.00.

As the tenant would not accept any responsibility for the damage and thereby required the landlord to file this claim, I find that the landlord should recover the \$50.00 filing fee paid to bring this application and I award her \$50.00.

I order the landlord to retain \$450.00 from the security deposit in full satisfaction of the claim, leaving a balance of \$75.00. I order the landlord to return this balance together with the \$60.00 fob deposit to the tenant forthwith. I grant the tenant a monetary order under section 67 for \$135.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlord may retain \$450.00 from the security deposit and must return to the tenant \$135.00 which represents the \$75.00 balance of the security deposit and the \$60.00 fob deposit.

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: February 15, 2013

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Residential Tenancy Branch

