



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the landlords for an order authorizing them to retain the security deposit and a cross application by the tenant for an order compelling the return of double the security deposit. Both parties participated in the conference call hearing, the female landlord representing both herself and her husband.

The landlord filed her application for dispute resolution online on January 14. On January 15, she was emailed a notice of hearing instructions from the Residential Tenancy Branch (the "Branch") which directed her to serve the tenant with a copy of her application and the notice of hearing within 3 days. The landlord testified that she was unable to open the attachments to the email and at the end of January, contacted the Branch which sent the documents again. The landlord served the documents on the tenant on January 30.

The tenant made his application for the return of double his security deposit on January 29 as he believed that the landlord had not filed a claim against the deposit.

### Issues to be Decided

Are the landlords entitled to a monetary order as claimed?  
Is the tenant entitled to the return of double his security deposit?

### Background and Evidence

The parties agreed that the tenancy began on July 7, 2011 at which time a \$475.00 security deposit was paid and that it ended on December 31, 2012. The landlord testified that she believes there was an inspection of the unit performed at the beginning of the tenancy, but stated that it was not done together with the tenant and she believed that the report would have been given to the tenant to sign. The landlord does not have a copy of that report and stated that she believes the tenant did not return it to her. The

tenant testified that he did not receive a report and that no inspection was completed at the beginning of the tenancy. The parties agreed that they did not inspect the unit together at the end of the tenancy.

The landlord testified that the tenant caused damage to the walls of the rental unit in a number of places, most significantly in an area of the dining room in which there was a 3' long mark. She further testified that the tenant had filled the most significant damage with some kind of silicone based product which could not be sanded. The landlord maintained that the tenant painted the rental unit yellow when it had originally been beige and that he failed to return the unit to the original colour at the end of the tenancy. The landlord testified that the tenant had failed to adequately clean the unit and that there were several cupboard doors which were not in working order.

The landlord supplied photographs as well as statements from family members. The typed statements are identical and the landlord testified that her family worked together to arrive at a statement with which they all agreed. The statements indicate that the suite was in "newer condition" at the beginning of the tenancy and that the large mark in the dining room was filled with a hard substance. The landlord also provided estimates of the cost of painting, although she and her husband did both the painting and the cleaning themselves. She provided receipts, many of which were undated, showing the items purchased to complete the work.

The tenant acknowledged having damaged an area of the wall near the dining room table, but testified that it was not filled with a silicone based fill and should have been able to be sanded. The tenant denied having done any further damage to the walls and stated that although he was responsible for the long mark in the dining room, other areas of the wall were damaged at the time he took possession of the unit. The tenant acknowledged that he painted one of the walls, but testified that the walls were several different colours and that he matched one of the colours.

### Analysis

Section 38 of the Act requires that a landlord make a claim against the security within 15 days of the end of the tenancy. Landlords who fail to act within the appropriate timeframe are liable to pay double the deposit. In this case the landlord made her application within 15 days, but did not serve her application on the tenant until 15 days after she received the application and notice of hearing via email. The tenant made his claim for double his deposit because he was not aware that the landlord had made an application.

I appreciate that the landlord had difficulty opening the attachments on the email on November 15, but I find her delay of 15 days to arrange for a second email to be sent to her to be unreasonable. I find that the tenant is not entitled to an award of double the deposit as the landlord complied with the timeframe established under the Act, but I find that the landlord should pay the \$50.00 filing fee paid by the tenant as he only incurred that cost because of the landlord's delay. I therefore award the tenant \$50.00.

Turning to the landlord's claim, the Act requires the landlord to complete a condition inspection of the unit at both the beginning and end of the tenancy with the tenant in attendance. Failure to comply with this requirement extinguishes the landlord's right to claim against the security deposit and I find that because the landlord acknowledged that she did not complete an inspection with the tenant at the end of the tenancy, she has extinguished her right to make the claim on the deposit.

The landlord not only applied to retain the deposit, but also applied for a monetary order for damage and while she may not have the right to claim against the deposit, there is nothing in the Act which prevents her from making a monetary claim against the tenant. Section 72 of the Act permits me to apply a security deposit to any award made in favour of a landlord and I find it appropriate to do this in these circumstances.

The landlord has statements from family members in which they describe the rental unit in "newer condition" at the beginning of the tenancy, but this description is not specific. The value of a condition inspection report is that each room in the rental unit is examined and the parties have the opportunity to note whether any damage exists. The landlord acknowledged that the rental unit had been rented for a short time to other parties prior to the commencement of this tenancy and I find it possible that some of the damage alleged by the landlord and not admitted by the tenant could have occurred during that tenancy.

I find that the tenant caused the damage to the dining room wall and I find that as a result, the landlord had to perform additional work to prepare the room for painting. While I find it likely that the landlord would have had to repaint in any event due to other damage which may have been caused by the previous tenants, I find that some additional work in sanding the affected area would have been required.

I accept that the walls in the unit were several different colours and I accept the tenant's testimony that he matched one of the colours already in the rental unit. I find therefore that the costs for which the tenant is liable with respect to repairing and repainting walls is limited to the cost of repairing the damaged area in the dining room and I fix that damage at \$50.00.

With respect to cleaning, I find that some additional cleaning was required in order to bring the unit to a reasonably clean condition. Specifically, I find that additional cleaning was required for cupboards and walls and for the stove and oven. I found both parties to be credible and I find that the differences in their testimony and their photographs can be attributed to different standards of cleanliness and different camera angles, with the tenant's photographs being taken from a distance and the landlord's taken close up. I find that a modest award is appropriate and I award the landlord \$30.00.

The landlord has been awarded a total of \$80.00. As she has been only partially successful in her claim, I find that she should recover just part of the filing fee she paid to bring her application and I award her \$15.00, which brings her total award to \$95.00. I dismiss the remainder of the landlord's claim.

### Conclusion

The tenant has been awarded \$50.00 and the landlord has been awarded a total of \$95.00. Setting off these awards as against each other leaves a total of \$45.00 payable by the tenant to the landlord. I order the landlord to deduct \$45.00 from the \$475.00 security deposit and to return the balance of \$430.00 to the tenant forthwith. I grant the tenant a monetary order for \$430.00. This order may be filed in the Small Claims Division of the Provincial 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: April 10, 2013

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Residential Tenancy Branch

