



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This was a hearing with respect to the landlord's application for a monetary order. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing

### Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Is the landlord entitled to retain the security deposit?

### Background and Evidence

The rental unit is a suite in the basement of the landlord's house in Surrey. In the application for dispute resolution the landlord claimed that the tenant moved without giving notice and that she painted the suite in different colours without permission and without repainting to the original colour before she moved out. The landlord claimed payment of one month's rent in the amount of \$650.00 and a further sum of \$675.00, presumably for painting.

I was not provided with a copy of a tenancy agreement. The only document submitted by the landlord was a copy of a receipt from a home supply store in the amount of \$33.58.

The tenancy began in November, 2010. The monthly rent was \$650.00 and the tenant paid a security deposit of \$325.00 at the commencement of the tenancy. The landlord said the tenant moved out on January 22, 2013 without giving proper notice. He said the tenant painted the suite in different colours and did not repaint it when she left. Apart from the receipt the landlord did not submit any documents concerning repainting or repair costs and he did not submit any photographs to show the condition of the suite

at the end of the tenancy. The landlord did not provide any evidence concerning his efforts to re-rent the rental unit.

The tenant submitted photos of the rental unit along with several written submissions. She said the rental unit was in terrible shape when she moved in and she spent a considerable amount of time and money to make it liveable, including painting it in neutral shades.

The tenant accused the landlord and his family of disturbing and bizarre behaviour, including incidents of voyeurism when they peeped at her through a bathroom fan when she was in the bathroom. The tenant accused the landlord and his family of entering her suite and searching through her papers and belongings. The tenant said that she reached the point when she couldn't take the landlords' behaviour any longer and moved out. She said that the other woman who rented another suite in the basement also moved out at the same time.

#### Analysis and conclusion

Although I give little credence to the tenant's allegations about the landlord's conduct and behaviour, I find that the landlord has not provided evidence to establish on a balance of probabilities that he is entitled to a monetary award as claimed in his application.

According to the tenant she expended significant time and money improving the rental unit after she moved in and it was left in much better condition than she found it. The landlord has not provided any documentary or photographic evidence to establish that there is a need for painting as claimed in the application.

The tenant claimed that she moved out because of the landlord's conduct; although I do not find that the tenant has proved that she had grounds to move out without giving notice and I find that she moved without giving proper notice, the landlord has not shown that he suffered any loss due to the tenant's breach; the tenant paid rent for January and moved out before the end of the month. The landlord has not provided evidence that he made any effort to re-rent the unit or that he suffered a loss of revenue; due to the improper notice. The landlord has the burden of establishing his entitlement to a monetary award. I find that he has not proved, on a balance of probabilities that he is entitled to monetary award for repairs or painting or for loss of revenue for February. The landlord's claim is dismissed without leave to reapply.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

**RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION**

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
  - a landlord's application to retain all or part of the security deposit, or
  - a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of his monetary claim. Because the claim has been dismissed in its entirety without leave to reapply it is appropriate that I order the return of the tenant's security deposit with interest; I so order and I grant the tenant a monetary order in the amount of \$325.00. This order may be registered 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: April 29, 2013

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Residential Tenancy Branch

