



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**MNDC, MNSD, MNR MND, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage or loss under the Act, unpaid rent, compensation for damage to the rental unit, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

The landlord confirmed that the application was amended to remove a respondent; only the female tenant is named.

During the hearing the landlord said that she had not suffered a loss of April 2013 rent revenue; rent had been paid to the end of the tenancy. Therefore, the landlord's claim has been adjusted to reflect that fact and to delete the request for damage or loss and unpaid rent.

The tenant supplied 2 sets of photographs as evidence; one set of photographs that were developed were not given to the landlord; therefore those photographs were set aside and not referenced.

The tenant's evidence submission indicated that she wished to make a claim against the landlord. The tenant did not make an application and is at liberty to do so in accordance with the legislation.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage and loss under the Act and damage to the rental unit?

Is the landlord entitled to retain the security deposit?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on May 1, 2012, it was fixed term that was to end effective April 30, 2013. Rent was \$650.00 per month, due on the 1<sup>st</sup> day of each month. A deposit in the sum of \$325.00 was paid.

A move-in condition inspection report was not completed. On March 15, 2013, a move-out condition inspection report was completed; the tenant did not sign that report, but her written forwarding address was supplied on the report. On March 26, 2013 the landlord applied claiming against the deposit.

The tenant paid March 2013 rent and the landlord located a new occupant who paid April 2013 rent.

The landlord has made the following claim:

Building inspection	\$240.00
Carpet cleaning	50.00
Paint and fix walls	750.00
Repairs – door knob, baseboard heater, bathroom vanity, kitchen fan	46.00
Window seal, sliding door/mouldings	355.00
General cleaning	150.00
HST	163.32
TOTAL	\$1,754.32

The landlord has made this claim as the result of the tenant's failure to report a mould problem and the tenant's failure to ensure that the rental unit was kept in a condition that would not encourage the growth of mould.

There was no dispute that on February 6, 2013 the tenant's support worker called the landlord to report a mould issue in the rental unit. The tenant said she had verbally reported this problem to the landlord's father, who acts as agent, in October 2012 and November 2012.

On February 20 arrangements were made for a February 22 inspection of the unit by the landlord's agent. The tenant said the agent did not come to the home; the landlord said the tenant was not at home and entry was not able to be made until February 24, 2013.

The landlord's agent found mould on window sills and determined that there was a high level of humidity that was causing condensation on windows. Arrangements were made to allow the landlord's mother to enter the unit so she could clean; the tenant was to call to arrange a time, but she failed to do so.

On February 26, 2013 the landlord contacted the tenant's support worker by email; informing her of the problems found in the unit; explaining that the unit was hot, humid and that there was little ventilation.

On March 9, 2013 the landlord had a home inspection company in inspect the unit and on April 14, 2013 a copy of the report was received. The report was supplied as evidence. The report concluded that the conditions in the unit were related to humidity and that the mould was the result of activities generated by the occupant. The report indicated that high humidity is common in the heating season because doors and windows are kept closed, which limits circulation. Aluminum door and window frames are particularly susceptible to condensation; which are the type installed in the unit.

The report indicated that non-circulating heat systems, such as that in the unit, do not allow air exchange. Activity such as showering, bathing, cooking and even breathing add to moisture. The bathroom had a fan but it does not meet current building standards that would now require an automatic control. It was recommended that the landlord install automatic controls (dehumidistat) for the bathroom fan and that the landlord should ensure that the kitchen fan exhausts to the outdoors. The landlord was not sure if the kitchen fan did vent outdoors; the tenant said it did not.

The report determined that the windows and door sealed units appeared to be in-tact. Mould growth was confirmed; it was not tested and no determination was made in relation to the type or species of mould present. The report recommended that the mould be cleaned and removed, but only after the humidity was brought under control. It was also recommended that sections of the interior finishes be removed and inspected for hidden areas of mould growth.

The landlord submitted a March 22, 2013 email from her realtor, who assisted the landlord in the purchase of the rental condo in April 2012. At that time the unit was immaculate; the carpets were freshly shampooed, there were no dents in walls and no mould issues.

The landlord said that the tenant had an extra person living with her and that it was intended only the tenant and her child live in the unit; the extra occupant would have contributed to high humidity levels. The tenancy agreement did not limit the number of people who could reside in the unit.

The landlord supplied a number of photographs taken of the unit during the tenancy and after the tenant vacated. The photos taken at the end of the tenancy showed a dent in a wall, a scratch along a wall, marks on the carpet, a bathroom cabinet panel that had fallen off the vanity in front of the sink, a baseboard heater that was falling away from the drywall, a cable wire installed through a wall, a cable face plate that was crooked, mould growing along windows, dirty cupboard doors, a dirty area under an appliance, dirty stove and oven, bathtub and toilet. The landlord said that a door knob on a closet door was missing and that a piece was missing from the kitchen fan. The landlord said the whole unit needed cleaning.

The invoice supplied by the landlord included general charges for items; no detailed list of parts or breakdown of the costs were included. The invoice did not indicate payment had been made; the landlord said she paid by cash and did not receive a receipt for payment. The landlord stated the invoice was her proof of payment. The landlord said she could obtain proof payment had in fact been made.

The tenant responded that the unit was left in a clean condition; a photo of the tenant and grandmother cleaning was supplied as evidence. The tenant also supplied a number of other photographs of the unit showing it had been cleaned. The landlord said the photos were difficult to see.

The tenant said she did not cause a dent to the walls, that 1 scratch was caused from a couch that had been placed along a wall and that the balance of the landlord's claim for repair was the result of normal wear and tear. Other scratches were in the unit at the start of the tenancy. The cable face plate was in the same state at the start of the tenancy and the tenant did not place the other cable through a wall.

The tenant tried to clean the mould with bleach; photos of mould growing in the corner of the living room wall along the interior wall, was supplied as evidence. The bathroom vanity panel had fallen off and this had been reported to the landlord's agent, who said it just required a clip. The door knob had come off in February and had been reported to the agent. The tenant pointed to the home inspection report which indicated the windows were in-tact and that there was no mention of a need to replace moulding and seals. The tenant was not aware of anything missing from the kitchen fan. The tenant denied that the carpets were dirty.

The tenant said that a number of the photographs supplied by the landlord, such as those in the bathroom, were taken during the tenancy and did not reflect the state of the unit after she had cleaned and vacated.

The tenant's witness said she was present during some of the time that the tenant was cleaning the unit at the end of the tenancy. The witness said that the unit was "pretty clean." The witness said she was aware of the mould as early as October or November 2012 and had started calling the landlord's agent. The baseboard heater had been falling off the wall at the start of the tenancy and she had encouraged the tenant to report the panel that had fallen off of the vanity.

## Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Residential Tenancy Branch policy suggests that when a landlord applies to retain the deposit, any balance should be ordered returned to the tenant; I find this to be a reasonable stance. At the start of the hearing I explained that I would apply the Act to the matter of the security deposit and any sum not ordered to the landlord would be ordered returned to the tenant.

Sections of the Act pertaining to the condition inspection at the start of a tenancy include:

### ***Condition inspection: start of tenancy or new pet***

**23** (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

### ***Consequences for tenant and landlord if report requirements not met***

**24** (2) *The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

- (a) does not comply with section 23 (3) [2 opportunities for inspection],*
- (b) having complied with section 23 (3), does not participate on either occasion, or*
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

As the landlord did not complete a move-in inspection report, I find that the right to claim against the security deposit for anything outside of unpaid rent was extinguished. As the landlord had claimed against the deposit for loss of rent revenue; which is damage or loss under the Act and not rent, I find that the landlord was required to return the security deposit within fifteen days of March 15, 2013, the day the tenancy ended and the date the tenant's written forwarding address was provided.

Section 38(1) of the Act provides:

**38** (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

- (a) the date the tenancy ends, and*
- (b) the date the landlord receives the tenant's forwarding address in writing,*

*the landlord must do one of the following:*

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

Section 38(6) of the Act provides:

*(6) If a landlord does not comply with subsection (1), the landlord*

- (a) may not make a claim against the security deposit or any pet damage deposit, and*
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

Therefore, as provided by section 38(1) of the Act, the landlord was required to return the deposit, in full, within 15 days. As the landlord did not have the right to claim against the deposit and did not return the deposit within 15 days of March 15, 2013 I find, pursuant to section 38(6) of the Act, that the landlord is holding a security deposit in the sum of \$650.00.

When the landlord obtained the home inspection report I find that the landlord was meeting the obligation required by section 32 of the Act and that the claim for the cost of that report is dismissed. The landlord chose to obtain the report so that guidance could be given on the solution to the mould problem. I find that there was nothing in the report that determined the tenant was responsible for the humidity levels in the home; she was simply living in the home and carrying out normal day-to-day activities.

According to the report obtained by the landlord I find it was the normal day-to-day living activities that resulted in the mould growth. The tenant could not be expected to cease showering or cooking. I also find, on the balance of probabilities, that the only ventilation in the home, outside of windows, was the bathroom fan which was not on a dehumidistat. A tenant should not be expected to leave windows open and is allowed to heat the home as they wish; a landlord must ensure that the home is properly maintained and ventilated, in order to avoid the kinds of condensation that has occurred in this unit.

I find that the tenant was not responsible for the failure of window seals or any other damage to the windows. Once the humidity issue was addressed the landlord would then be able to clean and paint the window moldings, knowing that mould would not return. This was a recommendation of the inspection report. Even if there was a delay in between the time the mould appeared and the time the tenant reported the mould, there was no evidence before me that would support the landlord suffered a loss due to a delay.

Therefore, I find that the cost of the window seal, sliding door molding and home report is dismissed.

The tenant's photographs showed the home in a good state and I found they were sufficiently clear to make that determination. I did not consider the landlord's photographs taken during the tenancy; only the photos taken at the end of the tenancy were relevant to the claim made. From the evidence before me I find, on the balance of probabilities, that with the exception of the carpets, the rental unit was left in a reasonably clean condition as required by section 37(2) of the Act.

From the evidence before me I find that there were some stains left on the carpet, and that the stove was not left in a reasonably clean state; therefore, I find that the landlord is entitled to nominal amount for cleaning; \$100.00.

In the absence of a move-in condition inspection report, based on the evidence before me, I find that the repairs, outside of the mark on the living room wall and hole near a door were the result of normal wear and tear. There was no evidence before me that the tenant had been negligent in relation to the panel that fell from the bathroom vanity. The panel was not damaged and was reported to the landlord by the tenant.

In the absence of the age of the door knob and any evidence that the tenant was somehow negligent, I find that the claim for that repair is dismissed.

When the landlord failed to record the state of the home at the start of the tenancy there was no record of the state of the baseboard heater, the cleanliness of the floor under an appliance, the kitchen fan and any dents on the walls.

The letter from the landlord's realtor indicated that the unit was immaculate when it sold in April 2012, 1 month prior to the start of the tenancy, and I have placed some weight on this. However, the realtor's letter cannot take the place of a move-in condition inspection report. I find, based on the acknowledgement of the tenant, that the tenant's sofa did cause damage to the wall and that the hole in a wall outside of a bedroom were not present at the start of the tenancy and that the landlord is entitled to nominal compensation in the sum of \$75.00 for wall repair.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
Building inspection	\$240.00	0
Carpet cleaning and general cleaning	50.00	100.00
Paint and fix walls	750.00	75.00
Repairs – door knob, baseboard heater, bathroom vanity, kitchen fan	46.00	0
Window seal, sliding door/mouldings	355.00	0
General cleaning	150.00	0
HST	163.32	0
<b>TOTAL</b>	<b>\$1754.32</b>	<b>\$175.00</b>

The balance of the landlord's claim is dismissed.

I find that the landlord's application has some merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

The sum owed to the landlord is deducted from the \$650.00 security deposit.

Therefore, I find that the tenant is entitled to return of the balance of the deposit in the sum of \$425.00

### Conclusion

The landlord is entitled to compensation the sum of \$175.00 for damage to the rental unit which will be deducted from double the security deposit owed to the tenant.

The landlord is entitled to filing fee costs.

The balance of the landlord's claim is dismissed.

The landlord must return the balance of the security deposit to the tenant.

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: June 25, 2013

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Residential Tenancy Branch



