



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, MNDC, MND, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation for loss – Section 67;
3. A Monetary Order for damage to the unit – Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord, Tenants and the Witness were each given full opportunity to be heard, to present evidence and to make submissions under oath.

### Preliminary Matter

It is noted that this hearing was originally convened on September 19, 2013. The Tenant’s midwife appeared and informed that the Tenants were in the process of having a baby and required an adjournment. The Landlord did not consent as the application had taken so long to be heard. Although the Landlord does not provide consent, I found that the matter of having a baby was of such significance that it would be more than reasonable to adjourn the hearing. I also took into account that the adjournment does not prejudice the Landlord. I therefore granted the adjournment.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy started on May 15, 2012 and ended on May 31, 2013. Rent of \$1,300.00 is payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$650.00 as a security deposit. The Parties mutually conducted both a move-in and move-out condition inspection and completed reports. The Parties agree that the Tenant owes 93.55 for the utilities.

The Tenants submitted that they had agreed to pay the cost of utilities prior to the Landlord making the application.

The Landlord states that the Tenants left the unit damaged and claims as follows:

- \$300.00 for the cost to repaint one wall. The Landlord states that at the onset of the tenancy the Tenants were given permission to paint the walls on the condition that they repaint the walls to the original color at the end of the tenancy. The Landlord provided a copy of this written and signed agreement. The Landlord states that the Tenants did repaint the wall prior to the end of the tenancy but left bubbles on the wall that required repainting of the wall. The Landlord states that no instructions were given to the Tenant on the type of paint, i.e., latex or oil based, to be used on the walls. The Landlord provided an invoice for \$500.00 that combined the cost of repairs to the flooring and the wall and the Landlord states that a large portion of the \$500.00 was for the costs of the wall repair. The Tenants state that when the wall was painted red, the paint bubbled and that these bubbles did not go away after they repainted the wall at the end of the tenancy. The Tenants state that they were not told what type of paint to use or the type of paint that was pre-existing. The Tenants state that the Landlord was at their unit during the tenancy and never said anything to the Tenants about the paint bubbles on the wall. The Tenant states that they do not agree that this one wall cost the amount claimed either in the application or the invoice;

- \$100.00 for the cost to repair a gouge in the laminate flooring. The Landlord states that some substance was used to cover the quarter sized dent and that the Landlord does not know how much of the \$500.00 in the invoice was allocated to the flooring repair. The Tenants state that they took all precautions for the floor including the use of furniture leg coverings and that the one dent is normal wear and tear;
- \$150.00 for the cost to replace a dishwasher. The Landlord states that the Tenant removed the dishwasher from the unit and in doing so damaged a connector. The Landlord provided the names of three major home and garden stores that the Landlord looked but was unable to find the part. The Landlord states that he did not look online or look at the manufactures website for part replacements. The Tenants state that they do not know who broke the connector but that the dishwasher was working the day before they moved out of the unit and that the Landlord called to tell the Tenant's the dishwasher connector was broken after the Landlord attempted to reconnect the dishwasher. The Tenant states that the hose with the connector is available on line for \$2.15. The Tenant provided the web site address for this part.

### Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Given the Landlord's evidence of the size of the dent, considering the Landlord's evidence that some substance was used to repair the dent, and accepting that the Tenant's took reasonable measures to protect the floor, I find that the Landlord has failed to establish either that the Tenants damaged the floor beyond reasonable wear or tear or the costs claimed to repair the floor. I therefore dismiss this claim.

Although the bubbles were left on the wall at the end of the tenancy and although it is clear that the Tenants carried out the work to paint the walls, considering that no evidence was provided by the Landlord that the Tenants' painting skill and knowledge were confirmed prior to giving the permission to paint and considering the failure of the Landlord to give any instructions on painting of the wall, I find that the Landlord must assume some responsibility for the results. Considering also the lack of evidence to support the cost of repainting the wall, I find that the Landlord has only substantiated a nominal entitlement of **\$100.00** for the damage to the walls. Without determining whether the Tenant or the Landlord damaged the dishwasher connector, given that the only damage to the dishwasher is to the connector, and accepting the Tenant's believable evidence that a part may be purchased online, I find that the Landlord has not substantiated the claim for the replacement of the entire dishwasher and I dismiss this claim.

As the Parties have agreed that the Tenant owes **\$93.55** for unpaid utilities, I find that the Landlord has substantiated an entitlement to this amount.

Considering that the Landlord has been only minimally successful with its application and that part of that success was based on the prior agreement of the Tenants that the utilities were owed, I find that the Landlord is only entitled to recovery of half of the filing fee in the amount of **\$25.00** for a total entitlement of **\$218.55**. Deducting this entitlement from the security deposit of **\$650.00** plus zero interest leaves **\$431.45** to be returned to the Tenants and I order the Landlord to return this amount forthwith.

Conclusion

I Order the Landlord to retain \$243.55 from the security deposit plus interest in the amount of \$650.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for the amount of **\$431.45**. If necessary, this order may be filed 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: October 31, 2013

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Residential Tenancy Branch

