



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on June 10, 2013. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The male landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

- Is the landlord permitted to keep the security deposit?

### Background and Evidence

The landlord testifies that this month to month tenancy started on September 28, 2012. Rent for this unit was \$850.00 per month and was due on the 1<sup>st</sup> of each month, although the landlords allowed the tenant to pay rent biweekly. The tenant paid a security deposit of \$425.00 on October 01, 2012. The tenancy ended on May 31, 2013 and the tenant provided a forwarding address in writing on May 16, 2013.

The landlord testifies that he did not do a move in condition inspection with the tenant at the start of the tenancy. Consequently, the tenant wrote to the landlord and informed the landlord that the tenant would not attend a move out inspection after receiving a final notice of inspection as no pre-inspection or inspection report was completed prior to the tenants rental of the unit and the tenant states that the tenant is not required nor does she wish to perform a post inspection with the landlord.

The letter goes on to state that the landlord is not permitted to keep the security deposit and the tenant expects to receive the security deposit to the forwarding address provided.

The landlord testifies that the tenant did not therefore attend the move out inspection. The landlord testifies that after the tenant had vacated the unit the landlord found that the tenant had painted a room a dark blue colour and a green colour. The tenant did not have permission to paint this room and did not return the room to its original colour at the end of the tenancy. The landlord testifies that they obtained a quote to re-paint this room for \$360.00. The landlord testifies that they choose instead to paint the room themselves and the room required two coats of paint in order to restore the room to its original colour. Part of this painting work also involved repairing a hole where the tenant had run a cable through the wall.

The landlord has provided photographic evidence showing paint rollers left behind by the tenant with green and blue paint on them and a written statement from a witness who has confirmed that the witness observed the apartment with one room having two blue walls and two green walls. The landlord has also provided photographs showing the first coat of paint going on.

The landlord testifies that the tenant did not return the keys at the end of the tenancy and the landlord changed the locks. The landlord has provided an invoice for this work for \$97.40

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord attending the hearing. With regard to the landlords claim for damage to the unit; I am satisfied with the landlords undisputed testimony that the tenant painted a room with a dark blue and green colour without the landlords' permission and failed to restore this room to its original colour at the end of the tenancy. I therefore find the landlord is entitled to recover the cost to re-paint this room of **\$360.00**.

With regard to the landlords claim for new locks; I am satisfied with the landlords' undisputed evidence that the tenant failed to return the keys to the landlords at the end of the tenancy. The landlords are therefore entitled to change the locks and be reimbursed for this cost from the tenant. I therefore uphold the landlords claim to recover the amount of **\$97.40**.

With regard to the landlords claim to keep the security deposit; Sections 23(4), of the *Residential Tenancy Act (Act)* requires a landlord to complete a condition inspection report at the beginning of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection report when the tenant moved in, I find the

landlord contravened s. 23(4) of the *Act*. Consequently, s. 24(2) of the *Act* says that the landlords' right to claim against the security deposit for damages is extinguished.

When a landlord's right to claim against the security deposit has been extinguished a landlord is not entitled to file a claim to keep the security deposit and if the deposit has not been returned to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlord a forwarding address in writing the landlord must pay double the security deposit to the tenant. Consequently as the landlord attending agreed they did not complete a move in inspection report at the start of the tenancy it is my decision that the landlords have extinguished their right to file a claim against the tenant for damages. The tenant is therefore entitled to recover double the security deposit to an amount of **\$850.00**.

However I find, that sections 38(4)(b), 67 and 72 of the *Act* when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the landlords to keep part of the tenant's security deposit to compensate the landlords for their monetary claim.

As the landlords have been partially successful with this claim for damages I find the landlords are entitled to recover the filing fee of **\$50.00** pursuant to s. 72(1) of the *Act*. I have made the following deductions from the security deposit:

|  |             |
|--|-------------|
| Painting   | \$360.00    |
| Locks  | \$97.40     |
| Filing fee   | \$50.00     |
| Total amount for the landlord                                | \$507.40    |
| Double the security deposit for the tenant                   | (-\$850.00) |
| Balance of the security deposit to be returned to the tenant | \$342.60    |

Conclusion

I HEREBY find in partial favour of the landlords' claim. The landlords are entitled to retain **\$507.40** from the security deposit which was doubled in favour of the tenant.

The balance of the security deposit must be returned to the tenant. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$342.60**. The order must be served on the landlords and is enforceable through the Provincial Court 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: September 17, 2013

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Residential Tenancy Branch

