



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Homelife Peninsula Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF, O

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72; and
- other unspecified remedies.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenants confirmed that they received copies of both the landlord's original application for a monetary award of \$645.75 and revised application for a monetary award of \$640.75. These hearing packages were sent by the landlord by registered mail on June 14, 2013 and June 18, 2013, respectively. I am satisfied that the landlord served the above packages to the tenants and that the parties served one another with their written evidence in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for damages and losses arising out of this tenancy? Is the landlord entitled to retain a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

This one-year fixed term tenancy began on November 1, 2012. Monthly rent was set at \$2,195.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$1,097.50 security deposit paid on October 13, 2012.

A joint move-in condition inspection was conducted on October 15, 2012, and a joint move-out condition inspection occurred on May 31, 2013. The tenants confirmed that they received copies of the inspection reports for these inspections.

The landlord's amended application for a monetary award of \$640.75 included \$288.75 to repair the countertop and \$351.75 to repaint portions of the rental unit that the landlord maintained was damaged during this tenancy. The landlord testified that the rental unit had only had one other set of tenants residing in it for the six-month period immediately prior to the start of this tenancy. She testified that the rental unit was basically new and had been painted within six months of the commencement of this tenancy.

The tenants provided sworn testimony and written evidence challenging the landlord's claim that they were responsible for damage to the countertop and for repainting in essentially three areas of the rental unit. The female tenant said that there were paint chips noted on the move-in condition inspection report. The tenants also disputed the landlord's claim that they were responsible for mould damage to the countertop.

#### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

At the hearing, the agent testified that the landlord has not undertaken any actual repairs of either the countertop or the painting damage. She said that the landlord has only estimates of the costs to conduct these repairs. She also said that she did not know whether the landlord has been able to re-rent the premises to other tenants.

While the landlord has presented estimates, no actual work has been undertaken 3 ½ months after this tenancy ended. As I noted at the hearing, I am not satisfied that the landlord has demonstrated that the landlord has suffered actual monetary losses for damage arising out of this tenancy for which the landlord is entitled to receive compensation.

Under these circumstances, I dismiss the landlord's application for a monetary award for damage arising out of this tenancy without leave to reapply. Consequently, I find that the landlord has no authorization to retain any portion of the tenants' security deposit. I order the landlord to return the tenants' security deposit plus applicable interest in its entirety to the tenants at the tenants' mailing address where the landlord served the application for dispute resolution. At the hearing, the tenants confirmed that this mailing address is correct. No interest is payable over this time period.

As the landlord has been unsuccessful in this application, the landlord bears the cost of the filing fee for this application.

#### Conclusion

I dismiss the landlord's application without leave to reapply.

I issue a monetary Order in the tenants' favour in the amount of \$1,097.50, the amount of their security deposit. The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 18, 2013

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Residential Tenancy Branch

