



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order permitting retention of the security deposit in satisfaction of the claim. Both parties appeared and had an opportunity to be heard.

Most of the evidence was heard on August 8, 2013. The tenant asked for and was granted an adjournment to August 30 to attempt to obtain evidence from plumbers who may have done work on the rental unit. The landlord was also given leave to file any additional evidence they may find in that time.

The hearing reconvened on August 30. Neither party had any additional evidence to submit so the hearing was closed.

### Issue(s) to be Decided

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

### Background and Evidence

This tenancy commenced April 15, 2005 as a one year fixed term tenancy and continued thereafter as a month-to-month tenancy. At the start of the tenancy the rent, which was due on the first day of the month, was \$1300.00 a month. By the end of the tenancy the monthly rent was \$1600.00. The tenant paid a security deposit of \$650.00.

A move-inspection was conducted and a move-in condition inspection report was completed.

The tenancy ended May 31, 2013. A move-out inspection was conducted on June 1, 2013 and a move-out condition inspection report was completed. The move-out condition inspection report did not note any damage. The tenant testified that during the move-out inspection she asked the property manager "How did I do?"; to which the property manager responded "Perfect". The property manager presented the move-out inspection report to the tenant, asked her to sign it and told he she would be getting all her security deposit back, plus interest.

On June 7 the owner of the property changed property managers, When the owner and the new property manager walked through the house on June 7, in addition to normal wear and tear, they noticed tow items of concern: a hole in the basement ceiling about eight inches square and a damaged exterior door on the lower back level.

The back door appeared to have damage around the handle and had been duct taped. The damage prevented the door from locking properly. The door was replaced at a cost of \$260.90. The witness testified that it was the door itself that was damaged; not the frame. The landlord's witness testified that she thought the door might be ten years old.

The hole in the ceiling was repaired at a cost of \$173.25.

The sum of \$163.03 was returned to the tenant. The landlord kept the balance of the security deposit and interest- \$510.00 - and filed this application for dispute resolution on June 13, 2013.

SP, the previous property manager and the person who signed the move-out condition inspection report as the landlord filed a letter stating that when she attended at the move-out inspection on June 1 "The tenant pointed out a whole in the ceiling that was from an apparent leak with the dishwasher that happened years ago. She claimed she had let us know about the hole but that we had not done anything about it. The tenant also noted that she was having problems with the back door however did not indicate that it would not lock or that it was due to any misuse."

The letter goes on to describe what the owner of the property determined after the house was vacant. The letter also states that: "Upon further investigation CR found no previous correspondence from the tenant regarding the hole in the ceiling as she had previously indicated."

The tenant testified that during her tenancy there were a number of plumbing repairs done at the house: a leaking fridge, bathtub taps, a leaking toilet,, and the outside tap. In addition, the dishwasher was replaced at least twice. Sometimes the property manager arranged for the plumber; sometimes the property manage asked the tenant to make the arrangements. In every instance the bill was sent to the property manager.

Some of the repairs referenced by the tenant are not referenced in the invoices and work orders filed by the landlord. The landlord's witness testified that she was assured by the previous property manager that she had been provided with their entire file. This tenant testified that she tried to obtain copies of invoices from the plumbing companies in the area but was told that information could only be provided to the property owner.

The tenant testified that at some point during the tenancy she had a leak in the basement. She called the property manager who told her to get a plumber in. The plumber cut a hole in the ceiling at the site of the dripping water but there was no leak there. The plumber followed the pipe to the kitchen sink and cut a hole behind the taps. They said that was not the source of the leak. The plumbers then pulled out the dishwasher and found that a clamp had been improperly installed. The water had travelled along a beam to the spot where it dripped in the basement. The leaking water had cause the floor to bubble. The tenant said the plumber fixed the clamp and there was not problem after that. The tenant testified that she discussed the hole with the pervious property manager in July of 2012 and March of 2013.

The landlord's witness testified that the hole is not near the kitchen; there is no sign of water damage near the hole; there did not appear to be any holes near the kitchen sink; and the kitchen floor did not appear to be warped in any way.

The tenant testified that she experienced a problem with the door shortly after they moved in. When the repairman put weather stripping on the two upstairs doors he also did something to the bottom of this downstairs door to try to get it to shut properly. He told her that was the best he could do; a new door was required. He also told her that the door was not lining up properly which was why the door did not shut. The tenant said they put duct tape on the door to try to hold the area together and to keep the door shut. They always blocked the door off with something to keep it in place.

### Analysis

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

In a claim by a landlord form damage to property, the normal measure is the cost of repairs or replacement cost (less an allowance for depreciation), whichever is lesser. The Residential Tenancy Branch has developed a schedule for the expected life of fixtures and finishes in rental units. This depreciation schedule is published in *Residential Tenancy Branch Guideline 40: Useful Life of Building Elements* and is available on-line at the Residential Tenancy Branch web site.

The landlord has several challenges in meeting its onus of proof.

The first is that the landlord's witness took over responsibility for this property after this tenancy ended. She has no personal involvement and must rely on the records provided by the previous property manager.

The second is that the landlord's witness says she has been assured that she has received the entire file for this property and those documents have all been filed as part of the landlord's evidence. However, an examination of the documents filed by the landlord shows that there is not a single work order or invoice for the period from April 15, 2005 – the start of this tenancy – until October 10, 2008. That document was with respect to a leaking at the kitchen sink. The next record of a service call is February, 2010, sixteen months later. It is hard to believe that in almost five years there would be only one repair requested or made. The only reasonable conclusion is that the record submitted by the previous property manager to the current property manager is not complete.

The third challenge is that Section 21 of the *Residential Tenancy Regulation* provides that in a dispute resolution proceeding, a condition inspection report completed in accordance with the legislation is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The letter filed by the person who conducted the move-out inspection confirms the tenant's testimony that she raised this issue with the then property manager but it does not offer any explanation as to why these damages were not noted on the move-out condition inspection report.

The landlords' witness pointed out that the hole in the ceiling does not line up with the kitchen. However, over the years, I have heard many, many landlords and building maintenance personnel describe how difficult it can be to locate the source of a leak as water will travel along a beam or pipe or other route to the point where it eventually breaks through a ceiling or wall. These same witnesses have sometimes described a lengthy process of investigation, which may involve cutting exploratory holes, before finally finding the source of the water.

The tenant told her story in a straightforward manner. A significant part of her testimony was corroborated by the letter filed by the previous property manager; namely, that she had raised the issue with the property manager at the move-out inspection and they were not included on the move-out condition inspection report.

The landlord's argument that the service records do not align with the tenants' testimony is not compelling because, as I stated earlier, I am not satisfied that the landlord's record is complete.

I find that the landlord has not met its' onus of proof. The landlord's claim for damages is dismissed. The landlord is ordered to return the balance of the security deposit and interest in the amount of \$510.00 to the tenant as soon as practicable. A monetary order in favour of the tenant in the amount of \$510.00 is provided to the tenant. If the landlord does not make payment as required by this decision, the monetary order may be filed in the Provincial Court and enforced as an order of that court.

Conclusion

The landlord's claim is dismissed and a monetary order in favour of the tenant has been granted.

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 30, 2013

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Residential Tenancy Branch

